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ABSTRACT

This report provides information on the impact of crime and the criminal justice system on minorities in the United States. The report is presented in two parts. Part one focuses on the historical perspective of crime and minority experience concerning crime, law enforcement, and the criminal justice system, with specific reference to blacks, Hispanic Americans, American Indians, and Asian Americans. Part two examines the inequality of justice as practiced in such institutions as the police forces, courts, and correctional facilities, and briefly discusses education, research, and community anti-crime efforts that affect minority groups. The report suggests that: 1) race is an important factor in the operation of the criminal justice system which seems to discriminate against minority racial/ethnic groups; 2) incarceration is applied primarily to the poor and minorities, while diversion, restitution, and other alternative programs are considered more appropriate for whites; 3) although minorities are more often victims of crime than whites, their involvement in the criminal justice system is disproportional to their numbers in population, and they have been virtually excluded from participation in policy-making activities against crime. Recommendations to correct the current situation and provide equal treatment for minorities within the criminal justice system are presented. (Author/MJL)

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THE INEQUALITY OF JUSTICE: A REPORT ON CRIME AND THE ADMINISTRATION OF JUSTICE IN THE MINORITY COMMUNITY

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by the

**National Minority Advisory Council
on Criminal Justice**

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Chairman

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Executive Editor

January 1982
Washington, D.C.

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"Our constitution calls for the national government to establish justice -- including social justice -- and also to insure domestic tranquility."

President Jimmy Carter
Miami, Florida
June 1980

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PREFACE

This report is a body of scholarship and analysis that portrays the disproportionate and adverse impact of crime and the criminal justice system on this nation's minority people. The report is the result of four years of extensive research undertaken by the membership of the multiethnic National Minority Advisory Council on Criminal Justice to the Law Enforcement Assistance Administration (LEAA), U.S. Department of Justice.

The Council was established on June 18, 1976, just a few weeks before the nation's celebration of its bicentennial, after nearly a decade of federal action and involvement to reduce crime and to improve the effectiveness of the criminal justice system. The purpose of this pioneering action by a federal agency was to create an advisory body from which LEAA could secure advice on issues critical to minorities in the area of crime and the criminal justice system. Establishment of the Council signaled an important break with tradition in that it marked federal recognition of the necessity and distinct advantage of increasing minority participation and of incorporating a minority perspective and understanding in LEAA policies.

Prior to the creation of the Council, no process for minority input to criminal justice issues existed on the federal level. The need for establishment of the Council was dramatically demonstrated not only by the underrepresentation of minority employment throughout the criminal justice system, but also by other compelling factors: the disproportionately large percentage of minorities arrested, convicted, and imprisoned; discriminatory practices and other injustices experienced by minorities with the police, in the courts, and in the prisons; and the high rate of crime that plagues minority communities and increases minority fears and frustrations.

The Council's mandate is to provide guidance, direction, and recommendations to federal, state, and local law enforcement agencies. Its membership is representative of the nation's four majority groups: blacks, Hispanics, American Indians, and Asian-Americans. Its members come from all geographic sectors of the country, and their expertise encompasses various elements within the law enforcement system, including police, criminal justice policy leaders, community advocates, corrections, and the law.

This report is probably the most comprehensive study of crime and criminal justice ever conducted from a minority perspective. It differs from previous studies in that it incorporates the opinions of diverse minority people along with the results of the Council's research activities. To assess the impact of crime and each element of the criminal justice system on minorities across the nation, the Council (1) reviewed past and current criminal justice literature, (2) sponsored numerous public hearings around the nation, (3) solicited input from consultants and experts on specific issues, (4) conducted field studies and interviews with selected minority criminal justice leaders and public officials, and (5) critically analyzed criminal justice policies and programs at various governmental levels.

Many public problems demanded the Council's examination, including the recent resurgence of the Ku Klux Klan, the revival of "severe and swift punishment" as a solution to crime, senseless assaults on minorities such as those in Buffalo and Boston, the New Mexico prison riot in reaction to inhumane conditions, and the immigration of tens of thousands of Cuban, Hatitian, and Southeast Asian refugees. The nation's problems in criminal justice, especially those that impact on minorities, are increasing while the necessary resources to resolve these problems are dwindling.

Although charged by LEAA to conduct this study, the Council had a higher responsibility to the minorities addressed in this report. At its public hearings across the nation, the Council heard testimonies of minority people and their expressions of anger, frustration, and despair regarding crime and the criminal justice system. These people shared with the Council their experiences with and judgments of the criminal justice system. This report speaks out of the deep anguish and anxieties reported with urgency by those who appeared before the Council.

This study is particularly timely, coming as it does during a period when the nation's minority population is experiencing a new wave of racism and inequality in the criminal justice system and society as a whole. This report and recent disturbing public events such as the Miami riot clearly present an urgent challenge for national leadership.

Dr. Lee P. Brown
Chairman
National Minority Advisory Council
on Criminal Justice

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The membership of the National Minority Advisory Council on Criminal Justice to the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice wishes to gratefully acknowledge the generous contributions of many people and organizations who assisted the NMACCJ in the realization of this report.

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The Council is deeply indebted to Dr. Alfreda Iglehart of the University of Michigan, Dr. Paul Takagi of the University of California, Berkeley, Dr. Darnell Hawkins of the University of North Carolina at Chapel Hill, Ms. Ella M. Kelly of the A. L. Nellum staff, Dr. Nolan P. Jones of the National Governors' Association, Ms. Cynthia G. Sulton, an independent criminal justice specialist and writer, Atty. Kirke Kickingbird and Alexander Shibine of the Institute for the Development of Indian Law, Jerry Mandel of National Council of La Raza, Atty. Haywood Burns of the City University of New York, Atty. Martha Fleetwood of the National Association for the Advancement of Colored People, Dr. Ozzie Edwards of Harvard University, Moises Sandoval of the Maryknoll Press, Dr. Larry Moss of Atlanta University and Dr. Linda F. Williams of Howard University.

Two staff members of LEAA, Mrs. Peggy Triplett and Ms. Carolyn Liberti Boyle, provided helpful guidance and assistance in their responsibility as agency monitors and liaison to the NMACCJ.

The Council is extremely appreciative to the scores of citizens who took the time and shared their concerns at the public hearings held around the country by the Council. Their public testimonies and insights significantly contributed to the development of this report's analysis. To them, we owe a special thanks because their input further generated this report and increased the Council's knowledge and understanding of crime and the criminal justice issues discussed

in this report. Likewise, the Council is grateful for the cooperation provided by a cadre of criminal justice leaders and political officials who consented to personal interviews for this report.

The Council is indebted to its previous staff directors including Dr. Gwynn Peirson and Alan G. Boyd who began their contributions when this report was an idea. In addition, we wish to thank the many minority criminal justice advocate groups who participated in our National Results Conference in October, 1979 and who supported the Council with contributions of research in the spirit of cooperation during the Council's four year tenure.

Finally we are grateful to George Bohlinger, the Administrator of LEAA, who consistently sought cooperation between the Council and that agency. Further, we appreciate the understanding, patience and support of our families who understood the demanding requirements of this responsibility and who solidly endorsed our commitment to this report.

Lee P. Brown
NMACCJ Chairman

EXECUTIVE SUMMARY

America stands as a distinctive example of ethnic, religious, and linguistic pluralism, but it is also a classic example of the heavy-handed use of state and private power to control minorities and suppress their continuing opposition to the influence of white racist ideology. Moreover, there is an air of hypocrisy in the public pronouncements about freedom by a nation in which the essential social levers of opportunity--education, jobs, housing, and political power --are kept out of the reach of the masses of minorities. Blacks, Hispanics, American Indians and Asian-Americans remain, with few exceptions, segregated, powerless, and at a marginal level of existence as a result of our nation's socioeconomic system and political practices.

Today, the existence of a large, disaffected minority population haunts America in its precarious posture as the world leader in equality and democracy. The periodic spasms of minority discontent across the nation are closely connected to the government's management of the economy and the use of government power in periods of crisis. Yet, for minorities all over the nation, the issues, above all others, are political and economic exploitation and racism, the basic causes of conflict and disorder in the American criminal justice system.

During the last twenty years, America's blacks, Hispanics, Asian-Americans and American Indians have been significantly influenced by a variety of social currents and historical events--chief among these forces is the Civil Rights Movement of the sixties. From the early 1960s to the present, important social and governmental initiatives have been enacted that have affected poor and minority people. Throughout the late sixties and the seventies, however, the nation's economic vitality declined, causing periods of deep recession and debilitating high rates of inflation. During such periods, the nation was faced with economic conditions that further decreased expanded opportunities for minorities. The decade of the seventies began with serious problems of inflation, which has lingered and worsened in recent years. At the same time, productivity fell to an all-time low, blocking any realistic potential for minorities to achieve measurable gains in real income. The consistently adverse and unstable economic trends often retarded, or even halted, the realization of many social programs such as the Humphrey-Hawkins Act, formally called the Full Employment and Balanced Growth Act of 1978. Recent federal policies based on sharply reduced budgets have also tended to favor military spending over domestic programs in a futile effort to balance the budget and counter the rise of inflation. Such adverse and stringent economic policies have profoundly affected the poor and minorities of the nation, the results of which are evident in the rise of crime and its social impact.

The Supreme Court's rulings in the landmark decisions Brown v. Topeka (347 U.S. 483) and Baker v. Carr (369 U.S. 186), "one-man, one-vote," and the Civil Rights Movement served to influence emerging ideas within the nation's body politic. These events challenged the prevailing thoughts and practices in public policies which denied equal rights to many minorities. Further, the Supreme Court, in its important decisions of Escobedo v. Illinois (84 S.Ct. 1758) and Miranda v. Arizona (86 S.Ct. 1602), significantly improved the ability of suspected criminals to defend themselves and increased their legal rights.

Executive leadership in the area of civil rights changed at the beginning of the sixties. President John F. Kennedy challenged the nation to carve out a "new frontier." Included in his new program was the first major initiative of significance extending minority rights and full inclusion within the nation's economic, social and political spheres. In addition, labor unions and the religious community joined the president in the nation's new pursuits for equal rights. President Lyndon Johnson later designed what he labeled "a great society" and further advanced the cause of equal rights when he signed the Civil Rights Act of 1964. From the circuit courts to the Supreme Court, various judicial decisions gave increasing validity to the demands of minorities. With support of all branches of government and a supporting public coalition, the system was finally acknowledging the need for minority participation at all levels in the society.

These events and efforts forced America to confront seriously the critical problems of minorities and the poor. Dr. Martin Luther King, Jr., alerted the nation to the dynamic ethical challenge posed especially by the Civil Rights Movement:

> America must reexamine old presumptions and release itself from many things that for centuries have been held sacred. For the evils of racism, poverty and militarism to die, a new set of values must be born.[1]

During the late sixties, "white backlash" became a widely used term to describe white apprehension about minority progress, total equality and full inclusion of minorities in the traditionally white male sphere of socioeconomic power and political influence. For minorities, the issue was the inequitable distribution of power within the system; the nation had made certain commitments of equality to minorities and the poor but had failed in its attempt to make good its social and economic promises. These national efforts achieved only marginal success in advancing minorities toward social and political equality. As the sixties came to a close, it became clear that the War on Poverty had failed to change the lives of the poor significantly.

One result of the Civil Rights Movement and the War on Poverty was that they produced and promoted a new realization in the public's conscience regarding minorities. Old truths were finally realized. Some aspects of the criminal justice system were revealed as inhumane. Often illegal practices by police in minority communities became increasingly apparent to the nation. The culprits, though, were not street criminals; they were public servants charged with upholding the law. Bull Connors' brutal treatment of black protesters in the streets of Birmingham--including the use of German shepherds, fire hoses and nightsticks--became an image of America's police to people all over the world. The lawbreakers included border patrol guards who had killed and brutalized incoming Hispanics. The culprits were the violent men at Wounded Knee charged with restoring order. From Miami to Milwaukee, the police, as symbols of authority for white America, often faced minority protesters in stormy confrontations. In turn, the police frequently became the target of minority protesters.

Similar acts of injustice were practiced by the courts. Hundreds of minority protesters were sent to jail or given excessive fines for their civil rights activities. Other minorities were jailed because of their immigrant or illegal status. Many felt that the law was perverted to control the protests of minorities against a patently unfair system. Further, the courts often failed to protect the rights of minorities who were aliens who sought equal justice.

But as minorities were slowly climbing the ladder of progress past the issues related to public accommodations and voting rights, they eventually discovered that the ladder to minority success and full participation in American had missing steps--economic and political power--the essential and elementary rungs to full equality.

While significant levels of progress eluded the minority poor, those same failures caused severe strains on the system.

> History tells us that a nation can survive for years by shifting the burdens of life to the people confined by force and violence to the bottom. But history also tells us that this process, with inexorable logic, rebounds against the oppressor. For at a certain point, the people on the bottom begin

> to straighten their backs and the burdens rise to the top of society, affecting everything and sparing nothing. That's where we are today.[2]

Violent urban riots erupted in the late sixties and again in 1970 and 1980 destroying people and property. In the process, America was challenged. The social disorders, just as the prison outbursts at Attica or New Mexico, indicated not only a fundamental inequality and an obvious gulf between the nation's ideals and its reality, but, more importantly, the failure of the system to respond adequately to the needs of its minority citizens. The nation was, and still is, confronted with a critical problem because the urban eruptions were so widespread, costly and damaging. Further, crime and violence affected not only the criminal but also the society. The restoration of order and justice requires that all elements of the system be made more efficient and equal, especially the criminal justice system, which was labeled in 1968 and again in 1980 as a chief cause of social disorders and division.

The Council acknowledges in this report that, after the riots of the sixties, there was a rush of appointed commissions to study civil unrest of that period. Among these were the National Advisory Commission on Civil Disorders, known as the Kerner Commission, the McCone Commission in Los Angeles, the Hughes Commission in Newark, and other such groups in Detroit, Cleveland, and Rochester. Each of these commissions was charged with examing the causes of the riots and making recommendations that would, ostensibly, preclude such future occurrences. In each city studied, unemployment as a way of life for minority youth and adults was found to be a major factor in causing the riots. Police behavior in the ghettos only added fuel to the fires.

Today, as was the case in the late sixties, officials in the criminal justice system deny primary responsibility for the violent ghetto uprisings and remain stubbornly insular and estranged from the minority community. Now the official law enforcement response to these social crises, as in the sixties, fails to demonstrate an understanding of the anger and frustration that the disturbances represent.

During the sixties, there was the eager anticipation that some social and economic wrongs would be set right and a feeling that perhaps the nation was moving with dispatch to eliminate racism and poverty, primary antecedents of crime, but the seventies were a decade of disappointment and bitterness over broken promises and unfulfilled dreams. The great surge in the sixties that carried racial justice briefly to the top of the nation's agenda had been stalemated--by war, economics, the disintegration of the old civil rights coalition and the rise to power of the so-called Silent Majority who became the present Moral Majority.

With the current conservative mood of America as a framework, this report seeks to uncover the elements of both myth and reality in the way crime has been traditionally viewed, and to provide a more salient view of the links between higher crime rates, on the one hand, and patently inequitable criminal justice practices on the other. In pursuing these goals, the Council not only has analyzed the injustices and flaws within the criminal justice system, but also has focused on the broader socioeconomic factors that stimulate crime. In the course of highlighting the system's inherent fallibilities, the Council addressed itself to the socially systemic dysfunctions which fueled the dangers caused by crime. The Council also examined the critical role the criminal justice system plays in supporting and maintaining a social order in which massive inequality exists. Because economics and politics contribute to injustices, they, too, are the subject of our analyses. Such analyses reveal much about both the limitations and the potentials for reform in the administration of justice for minorities. Perhaps even more importantly, a fuller understanding of the intricacies of America's political and economic systems can do much to alleviate the pervasive problem of crime and can help in the attainment of justice in the United States.

Despite what the Council found to be some apparent differences, some broad conclusions were made about the minority groups studied. Almost without exception, disparity is evident in all the important mechanisms which maintain social structure, a structure in which minority subordination and racial inequality exist.

In brief, the Council's studies reveal that all minorities are much more likely than whites to be in the lowest income groups, unemployed, ill-housed, and subject to poorer health care and politial powerlessness. With the exception of certain subgroups of Asian-Americans, minorities lead proportionately in the rate of criminal activity, arrest, and incarceration. Contrary to popular belief, the victims of minority crimes are, in large measure, also minorities.

The legal cases of minorities are most often handled by incompetent or overworked public defenders who are not minorities. The lack of bilingual communications skills and knowledge of the law on the part of these lawyers, further compounds the problem. The inequalities of the judicial process through the various stages of arrest, establishment of bail, pretrial detainment, and obtainment of legal counsel discourage many minorities so much that they give up hope and plead guilty, which only further encourages the widespread abuse of minorities through plea bargaining.

When brought to trial, minorities tend not to get a trial by a jury of their peers because of the usual underrepresentation of minorities on jury panels. Minorities get harsher sentences whether they plead guilty or are found guilty. Minorities usually end up paying higher fines and serving longer sentences.

In sum, the Council's report demonstrates that minorities are not only more likely to be suspected of crime than whites, but also more likely to be arrested and less likely to secure bail. Further, after being arrested, minorities are more likely to be indicted than whites and are less likely to have cases dismissed. If tried, minorities are more likely to be imprisoned and more likely to serve full terms without parole.

With fear of criminal violence being the all-consuming rationale, a considerable amount of literature on crime and criminal justice has already been developed. Much of this literature provides excellent summaries of the definition and magnitude of the problem of crime, which the Council's analyses support.

This report is in two sections: the first part focuses on the minority groups, while the latter portion concentrates on the institutions of the criminal justice system such as police, courts, and corrections, and concludes with brief discussions on education and research and community anti-crime efforts impacting minority communities. Charges of injustice by minorities are more often the rule than the exception, and civil rights abuses have become even more common as we enter the decade of the eighties. In minority communities all over America, crime is primary and serious social concern. Crime takes its toll in billions of dollars a year and immeasurable suffering.

In Part One, in individual chapters dealing respectively with blacks, Hispanics, American Indians, and Asian-Americans, it is clearly evident that in America race is an important factor in how the nation's criminal justice system operates. Further, it seems that the hard-line incarceration model is used primarily for the poor and minorities, while diversion, restitution and other alternative programs are viewed as more appropriate for whites, particularly if they are not poor.

Although minorities are more often the victims of crime than whites and their involvement in the criminal justice system is disproportionate to their numbers in the population, they have been virtually excluded from policy-making positions in the various national, state and local efforts to combat crime. Minority exclusion has contributed considerably to the failure of the nation's so-called war on crime. Based on the Council's studies, public testimonies, and observations, the criminal justice system has a farreaching and often negative impact on minorities. Therefore, a few conclusions from these studies, with their implications, are provided.

A. Major Conclusions

First, the literature clearly indicates that many kinds of crimes have increased in the United States, especially in minority communities. Seven of these crimes are grouped by the Federal Bureau of Investigation as "Index Crimes" in their regular crime reports, and they are the kind of crimes that feed fears about street crime and minority crimes: willful homicide, forcible rape, aggravated assault, robbery, burglary, larceny and motor vehicle theft. These Index Crimes are committed twice as frequently in cities with more than one million people than on the average throughout the country. Within such urban centers, these particular crimes are committed most frequently in minority communities.

Second, the literature shows that blacks, Hispanics and American Indians are inclined to commit crimes, and to be victimized by them, more frequently than whites. The most striking difference between white and minority crime rates appears in the data regarding youths between 10 and 17 arrested for robbery per 100,000 citizens.

Third, the Council concludes, not optimistically, that the demographic conditions that are superficially responsible for high rates of urban crime will not soon disappear. To grasp the implicatons of the situation, it should be noted that, during the Great Depression of the thirties, mass unemployment never exceeded 25 percent, but the Vice President's Task Force on Youth Employment reported that the unemployment rate for black and Hispanic inner-city teenagers in 1979 was 20.7 percent for blacks and 37 percent for Hispanics, and this condition continues. What is also evident is that perhaps a third of the next generation of minority youth will never enter the labor force. This means a major part of the young, minority urban population will remain in a condition of hopelessness and despair given present rates of unemployment.

B. Other Conclusions and Observations

In the highest councils of government, the forced resignation of the Vice President of the United States in October 1973, after a lengthy investigation of his evasion of income taxes and acceptance of bribes from contractors while he was a Baltimore County executive, and that of the President himself in August 1974, after the House Judiciary Committee voted Articles of Impeachment involving the obstruction of justice, and recent events labeled Abscam are sobering reminders of the extent of white collar crime. If the personal harm and property loss of these kinds of crime were to be counted, the statistical significance of the Index Crimes would be even further diminished.

The analysis of street crime includes an explanation of not only its causes but also the public's preoccupation with this particular kind of crime. Other kinds of crime seem statistically more serious, yet the greatest public fear and the harshest punishment fall on minorities who commit street crime. The Council contends that the reasons for this are both political and race related.

Because of the society's intimate role in perpetuating this kind of disparate treatment, the particular aberration created by the heavy concentration on street crime in the criminal justice system is not addressed extensively in the literature. It is important to clarify the nature of street crime and white collar crime and examine more closely the attitudes toward both. Street crime is usually attributed to minorities and the poor. It consists of robbery, mugging, murder, rape and assault. According to FBI crime statistics for 1978, urban blacks constituted 49.7 percent of all arrests for violent crimes and 32.7 percent of all arrests for property crime, composing 36 percent of all arrests. On the other hand, white collar crimes such as bribery, embezzlement, consumer fraud, and corruption are committed primarily by whites. The rate of crime in this category for whites is, in fact, double the black rate.[3] The government uses only two racial categories for white collar crime statistics. The important point is that, while minorities are overrepresented among those persons arrested and imprisoned for crime, they are not responsible for the majority of crime committed in this country. In addition, minorities are treated from the initial arrest to the ultimate detention in a much harsher way than whites who have been charged with similar crimes. There are no data to explain this obvious discrepancy other than the conscious choices of key descision-makers to focus on crimes committed more frequently by minorities. Because this kind of analysis is lacking, reformers have been denied the wisdom that such an analysis might provide.

Because of the disproportionate number of minorities whose lives are touched almost daily by the criminal justice system, either as victims or as offenders, this report has been written according to the definitions and concerns of minorities. This process is necessary because minorities are no longer passive objects of study; minorities are fully capable of defining themselves. Lerone Bennett has so aptly written in his book, The Challenge of Blackness:

> It is necessary for us [minorities] to develop a new frame of reference which transcends the limits of white concepts. It is necessary for us to develop and maintain a total intellectual offensive against the false universality of white concepts, whether they are expressed by William Styron or Daniel Patrick Moynihan. We must abandon the partial frame of reference of our oppressors and create new concepts which will release our reality, which is also the reality of the overwhelming majority of men and women on this globe."[4]

At this juncture in the history of minorities in America, there is little justification for minorities to regard contemporary social science theory and technique with anything but suspicion. This apparent shift in the point of view of minorities toward traditional social science methods has emerged because it has become blatantly clear that the group in power is likely to use every means at its disposal to maintain the status quo. At the same time, mainstream social scientists would suggest that those who have been excluded from this system have only themselves to blame. This kind of self-indulgence on the part of white social scientists continues only because many of them have carefully avoided genuinely challenging new intellectual thrusts of minority scholars which would force them to confront their own contradictions and shortsightedness.

In addition, the social paradigms that white social scientists have historically used to describe the minority person's relation to the criminal justice system are inappropriate given the fact that many minorities entered American society, not as immigrants or first class passengers on the Concord, but through either some form of mass coercion, as in the case of slavery, or the exigency of life over death, as in the case of Southeast Asian, Haitian or Cuban refugees.

Moreover, the Council notes in its analysis that many white social scientists bring with them professional habits and ideological baggage that are incompatible with what concerned minority investigators feel is satisfactory social science research. Many white social scientists do not believe they should be advocates. The Council submits that serious thought without equal action is empty and action without careful thought is useless. Nevertheless, many minority and some enlightened whites understand that all Americans--white, black, Hispanic, American Indian or Asian-Americans--who work on these problems of social reform are advocates in one manner or another. It is also important to add that contemporary racism now comes under the guise of objectivity. Historically, especially since 1965, the majority of research funds on all governmental levels earmarked for investigative inquiry on or about minorities has, in the main, gone to white institutions of higher education or private agencies. The myopic research perspective of this group of social scientists has precluded any significant minority participation in the projects that these funds supported. For example, between 1975 and 1980, the federal Office of Juvenile Justice and Delinquency Prevention spent $55 million for research purposes. Minority researchers were awarded not one research grant in those five years even though minority juvenile justice concerns and problems were in abundance.

This study of America's criminal justice system does not employ a conceptual framework that purports to be value-free or laden with neutral techniques, because these are the American social scientists' tools for the ideological rationalization of racial and class oppression which characterizes much of the current criminal justice system in America. Because of the limited participation of minority scholars in these research activities, too often the research questions posed were inappropriate, the hypothesis was incorrect and the methodology was insensitive to the minority community's culture and values.

Carter Woodson, the renowned black historian, raised a fundamental question in the thirties that perhaps needs to be raised again at the threshold of the eighties: "By what right do we [minorities], the victims of Western civilization, grant a privileged position to the values and concepts of a civiliziation which defines us [minorities] as anti-values."[5] In confronting this fundamental challenge, the Council advocates this basic belief, "We must redefine the concept of knowledge within the perspective of our own needs and interests."[6] The major concern of the Council in publishing this report is the disproportionate number of minorities who are involved in the criminal justice system and the reasons for such substantial involvement. While social science is an important tool in developing public policy, contemporary social science techniques have been often little more than modern sophistry designed and developed to legitimize further institutional instruments of racist and classist ideology. The Council has a clear and vested interest in defining crime and its system of administration and rehabilitation because of the unusual involvement of minorities. A description of this report's contents follows.

C. Area of Primary Focus

1. Impact of Crime and Criminal Justice on Major Minority Groups

a. Blacks. Blacks, as a group, tend to suffer disproportionately as victims of crime, and they are treated adversely by the criminal justice system. The part that traditional racism has assumed in this unfortunate set of circumstances seems evident, and the special lower socioeconomic circumstances of black life in America have combined to bring about an extraordinary intensification of racism within the criminal justice system. Despite recent data and the media image portraying the white middle class as the typical crime victim, minorities are more often victimized.

There are many causes of crime in the black community. After much research, the Council believes that there is a cause and effect relationship between adverse socioeconomic factors and crime. Further, evidence is presented that demonstrates rather striking commonalities between crime and social failures. A shocking number of black criminals who are incarcerated were unemployed or underemployed before their arrest. The constant suspicion of blacks by the police, their slow response to calls for help, their lack of respect or concern for black citizens, and their use of degrading language and offensive behavior all contribute to polarization between the police and the black community and the disproportionate degree of crime that plagues the black community.

The primary point from all these factors is plain: the fact that half or more of the persons arrested for crimes of personal violence and 40 to 50 percent of all prisoners in jails and penitentaries are black says nothing at all about the criminality of black people. Moreover, the fact that an even higher proportion of persons arrested are poor or impoverished sheds no light whatever on the criminality of the poor. What these facts actually do is clearly identify the focus of police and court activity.

While the Council views socioeconomic factors as a major cause of crime, it recognizes the pattern of institutional targeting of criminal justice activity in communities that are poor, powerless, and by and large urban and minority. At the beginning of the seventies, 81 percent of the black population resided in urban areas. In 1980, blacks comprised 11.7 percent of the U.S. population, but were 32.5 percent of those classified as poor and 32.8 percent of those arrested for burglary, larceny and auto theft in the FBI's Crime Index.

Based on the legacy of racism and discrimination that has been consciously developed over many years, and also the relationship between crime and unemployment, poor education, inadequate health care and substandard housing, the chapter concludes that crime in the black community will continue in the eighties unless poverty, widespread inequality and economic exclusion are seriously alleviated.

b. Hispanics. Hispanic grievances touch many elements of the criminal justice system. The laws, still being made by non-Hispanic legislatures, often penalize Hispanic populations. There is discretionary enforcement of laws, and those that are most actively pursued likewise penalize Hispanics. Police are often perceived as discourteous, disrespectful, harassing, threatening, provocative and excessively violent. Police departments as a whole are seen as unresponsive to Hispanic complaints and so tolerant of violent behavior by some police against Hispanics that it appears the departments go out of their way to cover up complaints of the excessive use of force. The predominately white court system works hand-in-glove with the police and remains nearly impervious to investigations of the way in which it processes Hispanics. A triple standard exists--courts deal with Hispanics very severely, offer relative justice to Anglos, and bend over backwards to exonerate police charged with heinous crimes. Prisons come close to being cruel and unusual (and utterly ineffective) in inflicting punishment on all inmates. But the Hispanic prison experience is often compounded by numerous other problems.

These grievances of harsh treatment are longstanding and have been raised continually in Hispanic communities throughout the country. Until very recently, these protests were not reported, or listened to, or responded to, by the dominant society. Hispanics were treated as if they did not exist--as though they were less than citizens. This "invisibility" was, and still is, contributed to by criminal justice statisticians who rarely count or analyze Hispanics as a significant minority population. The consequences of not seriously considering Hispanics range from the demeaning stereotypes that are held by some law enforcement officers to a system-wide underrepresentation of Hispanics at policy-making and top administrative levels.

In recent years, Hispanics have been able to demonstrate their concerns to a national and concerned public. Police use of excessive and deadly force has been the most explosive topic and at once demonstrates the depth of antagonism held by the police toward Hispanics and the systems' utter unresponsiveness to legitimate demands for justice. Hispanics are treated as not worthy of serious and equal consideration. However, far more numerous than unjustified police killings are the everyday complaints against police ranging from the common discourtesies to the relatively frequent beatings of Hispanic citizens by the police. At an early age, Hispanics learn to distrust, fear, and even run from the police. Police are even more antagonistic to Hispanics. History has shaped these attitudes. When the vast majority of contacts with the criminal justice staff are with English-speaking Anglos, who have little understanding and much fear of Hispanics, it is easy for both parties to view the other as an undeclared enemy.

Many Hispanics refuse to cooperate with the police except in dire emergencies, and police, for their part, are extremely slow in responding to calls from Hispanics for assistance. The perception of police in Hispanic communities is that they present a high presence, stopping, questioning and searching far too many people, in a cold and demeaning manner.

The problems of Hispanics in the courts involve well-documented cases of unavailability of bail, language difficulties, differentially longer sentences for Hispanics, incompetent legal representation in both defense and prosecution, insufficient numbers of adequate interpreters to provide services, minimal Hispanic staff representation at all levels of the judicial system, and most significantly, feelings of distrust and fear of the judicial process.

Prisons, too, are viewed by Hispanics with fear, places to be survived, schools for crime rather than "corrections." Again, language difficulties often exacerbate in-prison problems or prolong the time Hispanics spend in prison. Prison reforms in recent years have emphasized more hardware and security rather than preparing the prisoners for successful reentry into society.

It is a mistake to view the comprehensive list of Hispanic grievances as suggesting that all police, lawyers, guards or criminal justice bureaucrats are insensitive, punitive enemies. Conversely, it is wrong to think the complaints will subside after piecemeal concessions to serious problems facing Hispanics in the criminal justice system. To remedy the problems Hispanics perceive with the law enforcement agencies requires an understanding of the numerous ways, obvious and subtle, in which Hispanics are denied equal rights and protection under the law.

c. American Indians. American Indians as a group are the nation's only minority group specifically mentioned in the Constitution, the only minority once affirmed to have the sovereign right of self-government, the only minority whose sovereign government was denied sovereignty of its territory. Yet, the Council reports that in spite of the 90 million acres of land, mineral resources and vast quantities of water located on American Indian reservations, the treatment of American Indians in the nation's system of criminal justice is still inappropriate, brutal and, often, illegal.

American Indians have an astoundingly high arrest rate. It is three times that of blacks and ten times that of whites. The arrest rate for American Indians in urban settings is thirteen times that of whites and four times that of whites in rural areas. The reported crime rate is 50 percent higher on reservations than in rural America, the violent crime rate is eight times higher, and the murder rate is three times higher.

American Indians are arrested at absurd rates for public intoxication and other minor alcohol-related offenses, yet no alternative facilities are available to alcohol offenders who need treatment, not punishment. The lack of programs, such as detoxification centers, has a devastating effect on Indian people since many have committed alcohol-related offenses. American Indians also are the victims of unprovoked police brutality and harassment. They have a more difficult time raising bail and, as a group, suffer unnecessary pretrial detainment because they cannot post their bond. In addition, the Council reveals that the overwhelming majority of American Indians in the South Dakota Penitentiary had pleaded guilty. This raises the question of the right to plead not guilty as an important constitutional right for criminal defendants. The absence, in most instances, of interpreters fluent in Native languages, such as Navajo or Hopi, poses great problems. The Council found that most American Indian defendants will simply plead guilty to avoid a confrontation. It was found that, even if they are innocent, American Indian defendants fear that the treatment they might receive in a jury trial would be worse. Therefore, Indian defendants will often plead guilty because it is the path of least resistance.

The high crime rate among American Indians stems from the historically ill-conceived socioeconomic policies of the U.S. government and the Bureau of Indian Affairs. Prominent among their concerns was the expropriation of American Indian land, the subsequent isolation of American Indians on reservations, the insensitive effort to force cultural assimilation on Indians, and the failure to understand American Indian history and their traditional system of criminal justice.

Historically, the American Indian legal system was based on a strong sense of community. Tenets of American Indian religion and folk customs so infused tribal life that instances of violations against tribal codes were rare. Each member of the tribe was important to the group's survival, in contrast to the so-called rugged individualism that characterizes much of twentieth century American attitudes and practices.

In 1789, the government began its destruction of the real autonomy of American Indians except in symbols. Federal law now limits the criminal jurisdiction of tribal courts to crimes that are punishable by not more than 6 months in jail and $500 fine. Together, four agencies are responsible for law enforcement on American Indian reservations: tribal police, state police, the FBI, and the Bureau of Indian Affairs. This has led to duplication of activities, lack of coordination or cooperation, confusion about accountability, and general inefficiency. Authorities have no way of clearly knowing their jurisdictions. It is this system of insensitive justice that inexorably becomes a revolving door for many American Indian defendants.

Much like other minorities, American Indians face disproportionate levels of imprisonment. The complicity of the white judicial system and the recognition that prejudice has always been a factor in these vast proportions of Indian incarcerations need to be acknowledged.

In hearings, before the Council, American Indians complained about poor conditions in pretrial facilities, the absence of standards of fairness within the system and the deplorable conditions at the penal institutions to which they are sentenced. They repeatedly criticized the disparity between treatment of whites and Indians, especially if the victim of the crime is white.

The Council concluded that the treatment of the American Indian in the nation's criminal justice system is a direct extension of the colonial attitude that has traditionally characterized the government's posture toward American Indians. Instead of paternalism toward the American Indian, the distinctiveness of the American Indian cultures must be recognized and some commitment must be made to respect tribal legal practices on reservations--a commitment that would be sensitive to urban Indians as well.

Throughout the nation, American Indians continue to slip behind the rest of the population in nearly every category of social progress. The situation of the American Indian is, in effect, a crude microcosm of the total picture of American society in which racial polarizations have become the norm rather than the exception.

d. Asian-Americans. Asian-Americans are often considered without problems within the criminal justice system. Many citizens view them as successful and industrious, lacking the adverse problems that affect other minorities. But since the mid-1800s, the law and its agents have been cruel and unequal in their treatment of Asian-Americans. While laws were established against blacks, Hispanics and American Indians, racism and inequality of the law affected Asian-Americans just as harshly.

This chapter indicates that crime, delinquency, and victimization in Asian communities vary widely in nature and magnitude from one Asian subgroup to another. For example, because some subgroups form ethnic communities like Chinatowns, and others form corporate centers of trade like the Japanese nationals, the discussion of crime and the Asian-American communities requires individual treatment for each separate national group.

Historically, however, the Council notes that Asian-Americans have been no less despised than other nonwhite minorities. In 1882, when a total of 48 black people were lynched in America, the first federal immigration and naturalization statutes excluding Asians were passed. Moreover, in the late 1800s, Chinese were not allowed to testify against whites in court. In 1905, delegates from 67 labor organizations met in San Francisco to form the Asiatic Exclusion League. At that time, Chinese people were viewed with extreme hostility because of their potential competition with more politically established white workers. In 1924, immigration laws put permanent quotas on minorities from outside Northwestern Europe; the effect was to exclude the Japanese totally. Finally, in 1965, Congress removed the immigration quotas on Asian-Americans. Asian-Americans have been viewed as the model minority: hard-working, quiet, patient, and not rocking the boat. Many erroneously believe that Asian-Americans have no problems. However, many Asian-Americans experience inadequate and overcrowded housing, a need for bilingual and bicultural education and more access to social services. Discrimination against Asian-American people is as much a result of omission as commission.

National data were unavailable on Asian-Americans for the Council's research. Asian-Americans represented less than 1 percent of the U.S. population in 1970. Thus, the Council's conclusions regarding Asian-Americans are based primarily on data and information collected in California, where 36 percent of all Japanese, 39 percent of all Chinese and 40 percent of all Filipinos in the United States live.

The problems identified by the Council are more evident for some Asian-American subpopulations than for others. For example, Japanese, Thais, and Koreans who immigrate to the United States generally have high education levels and come from middle-class socioeconomic backgrounds. For these groups, the official crime and delinquency rates are very low. Instead, they tend to be more often the victims of crime than the criminals. For example, Koreans in their roles as petty entrepreneurs are victimized by armed robbers, extortionists, vandals and members of gangs.

Of all the Asian-American subgroups, the Chinese have had the most typical minority experience. The chapter indicates that they have larger, younger families and, accordingly, more of the high crime risk population. Moreover, Chinese juveniles have much higher arrest records.

The Council concludes that class is the distinguishing factor in the higher crime rates of the Chinese. In Chinatown, the average family monthly income in 1970 was $311. Sixty-three percent of Chinese families earned less than $3,600 annually; the adult unemployment rate was 13 percent and was much higher among Chinese youth; and suicide rates were three times the national average. The Chinese had the highest tuberculosis rate in San Francisco, and infant mortality rates were twice that of the rest of the city. Two-thirds of the adult Chinese population had less than a seventh-grade education, and their rate of substandard housing was 67 percent compared with 19 percent for the rest of the city. In sum, the Chinese community displayed what criminologists call criminogenic conditions.

More recently, the influx of 300,000 Indochinese refugees has renewed anti-Asian sentiments, both in poor communities where refugees now compete for jobs and in white areas where many resent the intrusion of these minorities. While data on the Indochinese refugee population are limited, evidence points to problems with the criminal justice system and the general society. Although many of the Vietnamese refugees are from the upper class, their psychological adjustment here has been as difficult as learning the language and the social climate. In addition, poor economic conditions in the nation makes adjustment of the Indochinese difficult. Generally, this group has experienced an adverse change in their social status. Family life has suffered by the adoption of new patterns that conflict with their old practices.

1. Institutions of the Criminal Justice System

Having viewed the situation of the individual minority groups, the Council then focused its study on particular institutions in the criminal justice system. These institutions were examined in logical order, that is, as minorities chronologically confront them. Hence, the Council examined first the police, then the courts, then the corrections system, and finally LEAA's education and research projects and community anti-crime efforts.

The theme of these reports is compelling: laws and public policies in the United States reflect the contradiction of a society attempting to act within an egalitarian ideological posture while treating minorities with direct, blunt and flagrant unequality.

In the sixties, under pressure from the Civil Rights Movement, the apparent realities of minorities underwent a change in form. Overt indicators of racial dominance were diminished, but institutional racism has continued and even increased when so-called neutral decisions and actions about education, employment, imprisonment, and other social systems have had to be made. Such decisions enhance racial subordination. This is the basic form that recent criminal laws have taken. After years of legal segregation and because of institutional racism, it was no longer necessary to maintain past legal justifications or practices. In short, the police, courts, and correctional system play a crucial role in perpetuating the view among minorities that they are powerless and without a voice in determining their own fate at a time when overt racism is outlawed. This view is maintained chiefly through the underrepresentation of minority employees in the criminal justice system. Thus, minorities see few of their own with the legal power to exercise authority. Moreover, when competition for basic needs becomes keen in a stagnant or receding economy and when the push for equality comes closer to home, the veil of charity in an already fragile socioeconomic system disintegrates. Minorities are treated by key elements of the criminal justice system in ways that stigmatize, brutalize and reinforce their oppression in society, as a whole. Individual reports in this section all underscore this point.

a. The Police. Minority complaints of police brutality are common since the police are so evident on the streets of minority communities. It is understandable then that police assaults and police use of deadly force are primary issues in minority communities today. The Council reports that police practices are too frequently arbitrary, discriminatory, and brutal. This kind of behavior is a violation, not simply of city ordinances or state statutes, but of fundamental constitutional rights.

Minorities understand that, theoretically, the functions of the police involve prevention of crime and protection of life and property. All too often police tend to use excessive force. The question minorities raise, however, is the historical one of who guards the guards; who polices the police? When it appears that criminal justice officials are working in collusion, not for justice but solely to protect members of their ranks, the question becomes that much more imperative.

Central to the problem of police brutality is the underrepresentation of minorities as police officers. Appreciable gains in minority representation in police departments have been made in the last ten years. It has been shown that the presence of minority police officers has a positive effect on police-community relations. Therefore, more minorities must be recruited into police employment.

The use of excessive force and abusive authority by police has become a national problem. Records show that many police abuses are, in reality, criminal offenses. Evidence also suggests that police abuse of minority citizens comes close to being an organized practice within some departments. That these acts affect minorities most is evident in the percentages of minorities killed by policemen. Some scholars maintain that minorities represent 80 percent of all persons killed annually by police although evidence on police killings nationally is unavailable.

While many of the underlying factors that trigger an officer's use of excessive force and authority are ostensibly external, there is mounting evidence to show that individual racism, institutional racism and faulty role identification contribute to police overreaction. At the same time that the U.S. government is stressing the value of human rights and human life, the criminal justice system is perceived to function in an incongruent manner with regard to the attainment of human justice. The fact that criminal actions filed against erring police officers have little chance of success attests to this. Civil actions for damages due to assault, false arrest, wrongful death or malicious prosecution have more potential for success, although the difference is more relative than real. The percentage of civil suits actually brought that are adjudicated in favor of citizens versus police is discouragingly low. This encourages the police to feel free to use excessive force. Further, too often neither the courts nor lawmakers protect the rights of minorities against police use of excessive force.

Minorities suffer other serious problems with police who are often insensitive to minority cultures and who lack bilingual skills. Police response time to minority victims is slow. Police selectively enforce the law. When police do arrive at the scene, they often offend or increase conflict through their actions. Frequently, the quality of police services reflects insufficient training for dealing effectively and responsibly with minorities.

In short, the system appears to function to protect police officers who have killed citizens. In the final analysis, power is an inextricable element of police accountability. Police are only responsive to those whom they perceive to have power in the society. To halt the potential danger of police, minorities must gain access to the power structures, at least in their communities. Meanwhile, the police should not be allowed to define their role to the communities; rather, the communities should define and limit the role of the police. Minorities want police that serve them, prevent crime, respect their language and culture, and respond to their communities with the same speed and respect routinely accorded white communities.

b. The Courts. This chapter documents the use of discriminatory sentencing and bail procedures to perpetuate racial and class inequities. Too often courts have operated to aggravate rather than relieve the socioeconomical oppression of minorities. Most minority defendants actually brought to the point of trial plead guilty. If a trial is held, in most cases it is without a jury. Trial by jury is a very rare event, occurring in no more than 10 percent of felony cases brought to the courtroom. In the cases of misdemeanors or disorderly conduct, which are far more common, most jurisdictions have no provisions for trial by jury.

The Council notes that the pervasiveness of racial prejudice in the judicial system has been cited increasingly by prestigious fact-finding commissions and scholars since the civil disorders of the sixties. This report also points out the glaring disparities in the sentencing of the poor and minority defendants compared to the affluent and white. This phenomenon lacks any rational basis and leads the researchers to the inescapable conclusion of institutional racism. These practices undermine the integrity of the entire criminal justice process, implicate the court in racial and economic discrimination, does violence to the U.S. Constitution, and contributes to prison unrest and community disrespect of the legal process.

Again, part of the problem is the significant underrepresentation of minorities at every level in the judicial system. For instance, minorities are grossly underrepresented in federal judgeships. Minorities are sparsely represented in courts as judges. A similar situation of limited minority involvement as personnel exists for lower state and local courts.

The Council concludes that one cause of this underrepresentation is the political patronage system currently used to appoint judges. In theory, the judiciary in a constitutional democracy functions as an impartial arbiter of conflict, relatively free from social, economic or political interests. Despite the theory, all too often the judiciary has been used as a political tool. Politicians generally select judges who share their political, racial and class biases and prejudices. Judges have broad discretionary powers and ultimately make public policy that reflects their biases. In short, the use of political patronage appointments as a means of selecting judges for the bench has not contributed to minority respect for the impartiality and equity of the bench. The systematic exclusion of minority group members from juries is also a serious flaw in the criminal justice system. It has been, and remains, a central problem in the administration of criminal justice.

But so-called objective methods of jury selection are not much better. For example, voter registration lists, which are often used to draw jury panels, exclude minorities who have been purged for nonvoting or who are unregistered. A better source of public records from which to secure real diversity in the pool of perspective jurors is the driver license listings. Blue collar and hourly workers, whose salaries reflect a loss during jury duty, often seek to be excused as opposed to salaried persons, since jury compensation is negligible.

Because of these and other factors, even "objective" methods of developing a jury panel tend to result in a selection pool that is largely middle-aged and elderly middle-class whites. The right to exercise a number of preemptory challenges by both prosecution and defense further increases the probability of a majority middle-class jury, especially since each challenge by the prosecution of a minority decreases the relative minority representation on the panel to a greater degree than does the challenge of middle-class whites.

Finally, progress toward needed reform in this area appears stalemated at this point. The long line of Supreme Court decisions guaranteeing equal rights for indigent and minority defendants appears to have come to an end with the Burger Court. In 1974, the Burger Court denied indigents the right to court-appointed counsel in their pursuit of discretionary review. It further limited the indigent's exercise of his or her right to counsel by permitting the state, as a condition of probation, to impose the payment of state-incurred costs for appointed counsel.

A close examination of the data suggests that the judicial process does not seem to sort out the innocent from the guilty, so much as the well-to-do from the poor. A steady series of advantages accrue to the more affluent defendant. He or she is considerably more likely to receive a preliminary hearing and, therefore, to have the case dismissed and not even brought to trial. Having money, he or she is more likely to be released on bail, which also has a substantial bearing on the outcome of the case. During all these procedures, the defendant is much more likely to have his or her own lawyer working to take advantage of the many procedural protections and to influence the police and the prosecutor to drop the charges altogether.

In conclusion, the practices and policies discussed in this chapter undermine the integrity of the entire criminal justice process, implicate the courts in racial and economic discrimination, and do violence to the nation's professed legal traditions, further contributing to prison unrest and community disrespect of the entire legal process in the country.

c. Corrections. The chapter examines what happens to minorities after they have been convicted and sentenced. It reports that, while the U.S. prison system is more and more populated by minority inmates, control of the system remains in the hands of predominantly white males. For the United States as a whole, it was found that nearly 50 percent of all prisoners are minorities, even though only 9 percent of the population is Hispanic and 12 percent is black. Yet, in terms of prison personnel, the 1970 U.S. census reported that, of all full- time wardens, whites accounted for 93 percent, blacks 6 percent, and other races 1 percent. In terms of custodial personnel, of the 91 percent of those identified by race, whites accounted for 85 percent, blacks made up 12 percent, and other races made up only 3 percent. Although Hispanics were counted as white, they are estimated to account for almost 4 percent of the personnel. For the most part, prison personnel are neither bilingual, bicultural, nor sensitive to minorities although a very large proportion of their prisoners are black, Hispanic, American-Indian and Asian-Americans. Correctional administrative positions also exclude minority personnel.

Data are reported that demonstrate that minority women suffer much the same overrepresentation in prison populations as minority men.

As prisoners, minorities face the effects of racism in several ways. White prisoners often gain more privileges such as exercising, seeing visitors and getting better jobs. Minorities experience many subtle acts of racism. Treatment by prison officials is often based on race or languages. Prison rehabilitation programs are middle-class oriented, including psychological testing which is almost always in English only. Further, the tests are administered by white correctional counselors who do not understand minority culture or who cannot speak Spanish or native languages.

The structure of the parole system is also antithetical to minority prisoners' interests. The main criteria used by parole boards in determining release are employment, housing, age (persons 18 to 25 years old are assessed as high risk), criminal history and behavior. Given the social handicaps affecting minorities, these criteria further reduce minority prisoners' chances for parole. Minority prisoners have only ghetto or barrios to return to where unemployment is high. Further, the judgment by white prison officials is affected by middle-class values and the tinge of racism. Thus, minorities experience, even in prison, exclusion from justice.

d. Education and Research. This chapter critically analyzes the failure of the U.S. government to educate, train, and use minorities in the criminal justice system, and to provide funds for minority investigators to conduct research on subjects of crime and criminal justice. The present level of underfunding and underencouragement of minorities to conduct research in criminal justice points to the deficiency of much of the present research done by white investigators.

Despite the obstacles, minorities have been engaging in criminal justice research, but their findings have been subjected to challenges regarding the relevance of the results, merit of their research, and overall job performance. The Council learned, based on careful analysis, that LEAA itself has underfunded minority researchers as well.

A great deal of the current research conducted by white investigators has been descriptive rather than analytical and often blatantly racist. For the most part, the research focuses on the individual as the chief unit of analysis, while the problems faced by American minority group members are generally structurally caused and collectively shared. However, neither Hispanics nor Asian-Americans in most criminal justice research have been counted as a significant minority group. The Council recognizes that minority researchers have made and continue to make valuable contributions in the area of criminal justice. Further, it is urgent that these contributions be recognized and utilized, as well as funded, by the Department of Justice.

The Council notes that several options are available to advance the education of minorities in criminal justice. Certainly, federal support can be used to plan and develop graduate programs on minority campuses. In addition, the same federal support can be devoted to enlisting the efforts of nonminority institutions in training minorities. The Council strongly urges federal, state, and local governments to support more research by minority investigators on issues in criminology. This report has been a step in that direction.

While white researchers have used the bulk of research grants and contracts to conduct investigations into the problem of minority crimes as systemic injustices, crime has increased on all levels and the conclusions of these social scientists have added confusion rather than clarity to these complex problems. Programs have been designed based on such research, yet cities and prisons explode in disorder. While the federal response to crime has been to support, through grants, more guns, tanks and sophisticated technology, equally as deadly and dangerous are the ideas and research of some nonminority social scientists. While minority on minority crime has become an extreme danger in minority communities, the greatest portion of educational and research moneys have gone to nonminority researchers and institutions. Federal support in this crucial area has not been equal to the problems in crime and criminal justice adversely affecting minority communities.

e. Community Anticrime Program. The Council firmly believes that the war against crime requires the participation of the citizen. Police often abuse, the courts often miscarry justice, and prisons often fail to rehabilitate, while some scholars ignore the facts. During the last fifteen years, the government has gone in the wrong direction to fight crime by spending millions for police and hardware. Too often efforts to combat crime have excluded the people closest to the problem. People who live in the suburbs have designed anticrime programs for inner-city ghettos and barrios although unaware of the culture or incapable of speaking the peoples' language.

The Council maintains that crime in minority communities results from institutional failures including the impact of inequality and racism. Crime has also increased because many within the law enforcement system violate the law and exercise their responsibility not based on the law or modes of decency. The public, including minorities, has also become cynical and distrustful of law enforcement personnel.

Crime and the fear of crime have altered the conduct of many minorities, e.g., double bolted doors, staying home at night, and installation of alarm systems. Police have not reduced crime, especially in minority communities where the causes of crime are beyond their control, and the government has not developed adequate social responses to urban problems. A viable alternative to community crime problems is the participation of the citizen. A key factor in solving the community crime problem is the citizen. In the last decade, citizens have initiated activities to halt crime's increase. Community anticrime programs not only increase cooperation and awareness but also encourage the notion of community, people knowing each other, supporting and protecting themselves and property, a cardinal method to fight crime. The Council believes the participation of the citizen with the aid of necessary social reforms is a critical means to reduce neighborhood crime.

3. Recommendations

The Council does not claim that the ideas or recommendations expressed in this report are the only answers, although they do represent an answer to the gnawing problems that engulf the nation and that require serious response. Through these issues, the solutions and other recommedations the Council proposes finally, we trust the nation, its leaders, and people are moved closer to the ideals of justice while reducing crime and its negative impact on society.

NOTES

1. Lerone Bennett, Jr., *The Challenge of Blackness* (Chicago: Johnson Publishing, 1972), p. 17.

2. Ibid.

3. *Statistical Abstract of the United States, 1979*, U.S. Department of Commerce, Bureau of the Census (Washington, D.C.: Government Printing Office), p. 186, No. 312.

4. Bennett, op. cit.

5. Ibid.

6. Ibid.

CHAPTER I

IMPACT OF CRIME AND CRIMINAL JUSTICE ON BLACKS

> I remember the famous line or the infamous line from the Dred Scott Decision, when Chief Justice Taney said that no Negro has any right which any white man is bound to respect. That continues to be a kind of judicial fallout in our country like a polluted atomic bomb. For example, Black people have long felt that they could not get a fair trial in this country because of color. It seeps over, also, into employment and every phase of American life. We have a kind of unofficial apartheid in this country.[1]

The American public has a steadily growing preoccupation with crime and its violent effects. Today's fears focus primarily on the threat of street crimes--the violent muggings and robberies that empty cities at night. Responses to public fears of street crime have increasingly helped to set the tone of presidential, congressional, gubernatorial and mayoral elections. Polling organizations and the media have described the extraordinary importance of the electorate's concerns about crime.

For a majority of white Americans, it is predominantly the perceived prospect of their victimization that most frightens, frustrates and angers them. For black citizens, as this chapter will vividly show, it is their dual prospect as victims of both crime and the criminal justice system's harsh and unequal treatment that often pervades the thoughts and contributes to their fear, distrust and hostility. Because blacks are more likely than whites to be the victims of crime and are more likely to meet disregard, disrespect and indifference as victims, blacks must also live with the reality that they are disproportionately suspected, arrested and prosecuted and more harshly sentenced. Further, blacks are brutalized by police and prison guards in ways largely unknown to their white counterparts. With regard to crime and criminal justice, black Americans live in a condition of double jeopardy: (1) drastically overrepresented in the national arrest and imprisonment statistics and (2) more likely than whites to be victims of rape, robbery, burglary, larceny and assault. Furthermore, the typical victim of crime is often a young, poor, undereducated black person, while the typical prisoner is similarly poor, black and under 30 years of age and has not completed high school. Thus crime and the criminal justice system come together to constitute a kind of double whammy for blacks.

The current criminal justice situation has evolved gradually but consistently throughout the history of this country. The breeding grounds of crime have been allowed to go essentially unchanged despite the strong and repeated warnings of black leaders. Unequal application of the law, as well as atrocious social, economic and political conditions, has helped to spawn and sustain a growing criminal element within black communities. The indifference of criminal justice agencies to black-on-black crime has served to further its consistent growth. The bulk of concern has not been for black-on-black crime, but rather for the more newsworthy black-on-white crime. Only the witnessing of riots and increased street crime has caused white Americans to be concerned with previously ignored black-on-black crime.

A. Historical Perspective

The crime problem in America has long been a euphemism for the black problem. A careful examination of the economic, social and legal precedents to the current "crisis" is therefore prerequisite to a clear understanding of the contemporary plight of black Americans as it relates to crime and the criminal justice system.

To recount the evolution of the significant economic, social and legal developments affecting the black crime problem requires a reexamination of American history of a type not typically taught to the average citizen. This analysis presents some answers to the difficult questions so poignantly phrased by Federal District Judge Leon Higginbotham when he was called to the White House after the assassination of Martin Luther King, Jr., and the subsequent urban riots. As recounted in his scholarly volume, In the Matter of Color, Judge Higginbotham asked:

> Why had that very legal process that had been devised to protect the rights of individuals against the will of the government and the whim of the majority been often employed so malevolently against blacks? What were the options that ought to have been exercised years ago, even centuries ago, to narrow those disparities in the meted-out justice that had periodically--and had now once more--kindled black hatred and white fear?[2]

Black people came to America first as commodities valued for their labor. Africans, involuntarily brought into the then English colonies, initially as indentured servants and soon thereafter as slaves, worked without compensation building and helping to sustain the new economy of America. Slave-owning legislators developed an intricate legal system with separate "slave codes" to support that slave labor system. After 250 years of bondage, black Americans were emancipated from slavery only to be shackled into a peonage labor system called sharecropping. The segregated Jim Crow social order and a legal process which included convict leasing were established to support that system of further exploitation of black labor. The most recent phase during the last decade of the economic history of black Americans includes their struggle to compete as wage laborers in an economic system nominally described as one of "free enterprise," but which for black Americans has been constricted by various forms of racial discrimination. This most recent phase has been one of the greatest participation by the greatest number of blacks in the fight to end their own oppression. The struggle has involved civil rights organizations, economic boycotts, demonstrations, subjection to violence and a long series of interactions with the courts and legislatures to secure full and equal justice accorded white Americans.

From slavery, through segregation, to the current period of more subtle forms of discrimination, blacks have been kept in their social and economic place in America by legal and extralegal methods--by laws, law enforcement and violence. The use of law throughout the history of this country to enslave and oppress black Americans explains partially why some blacks lack respect for and violate the criminal laws of the land. The violent victimization of black people from their kidnapping from Africa, to their enslavement in America and later in their efforts to exercise their full rights as citizens of this country to vote, work, attend school and use public accommodations answers most questions about why violence continues to exist in black communities.

It is believed that the first Africans imported to America to Jamestown, Virginia, in 1619 were legally recognized as indentured servants. By 1640, most Africans involuntarily imported to the colonies had neither indenture status nor contracts and could not anticipate freedom. A few ". . . enjoyed the dubious distinction of having contracts providing that they were 'servants for life' or 'perpetual servants.'"[3] As the odious system of slavery evolved, so too did ". . . a legal process that assured blacks a uniquely degraded status--one in which the cruelties of slavery and pervasive racial injustices were guaranteed by its laws."[4] The slave codes were first enacted in Virginia and then quickly copied by the other southern colonies.

There were variations from state to state, but the general point of view was

> . . . that slaves were not persons but property; and laws should protect the ownership of such property, should protect whites against any dangers

> which were likely to arise from the presence of large numbers of Negroes, and should maintain a position of due subordination on the part of slaves in order that the optimum of discipline and work could be achieved.[5]

Black slaves were thereby reassigned from the family of human beings to the legal classification of real property. They had no rights to protect themselves against abuse or even murder by their owners, but if they were harmed or killed by others or the state, their owners were compensated for property loss.

Public protection in colonial America required that both slaves and freemen be punished for criminal transgressions. The traditional criminal law, designed for free men, was not adequate for slaves.

> The intrinsic nature of chattel slavery caused the development of a penal system appropriate for slaves, a system in which the master, as prosecutor, judge, and enforcer, administered justice within his domestic establishment, undisturbed by public authorities.[6]

When slaves were subject to criminal charges, they were tried in a special court without the right to a jury. The verdict of that court was final and the punishment ordered more severe than that administered whites convicted of similar crimes. Owning no personal property that could be confiscated or attacked, slaves suffered death or corporal punishments. The punishment of early colonial courts--the whip, stocks, pillory, branding and mutilation--remained slave punishments until after the Civil War. Such punishments were abandoned in the traditional criminal law in the early nineteenth century.

Legal enactments also severely curtailed the freedom of so-called free blacks in colonial and antebellum America. "All the slave states sought to expel them or so circumscribe their civil rights that their status approached that of slaves."[7] Free blacks convicted of serious crimes received such punishments as death, flogging, enslavement or deportion. Later, during the late 1700s Virginia, North Carolina and South Carolina enacted laws prohibiting the migration of free blacks into those colonies. Free blacks in South Carolina were heavily taxed and were required to obtain white guardians. Vagrancy laws in Virginia were employed to force free blacks back into bondage; courts "hired out" convicted free black vagrants.[8]

In 1776, a century and a half after slavery began in

America, a new nation, composed in large part of slaveholders, issued a Declaration of Independence which bore witness to the world that "all men are created equal" but decreed that a black slave constituted only three-fifths of a man for the purposes of both taxation and representation. Also included in the Constitution was a fugitive slave clause which ". . . does not specifically give the responsibility to any governmental official, but ultimately, the rendition of fugitive slaves falls on the president under his duty to enforce the Constitution and laws."[9]

During the thirty years prior to the Civil War, runaway slaves and free blacks alike migrated north and west from the South in the hope of finding better opportunities and treatment. The reaction to this slow but steady migration was increased racial animosity in the North and West as demonstrated in the enactment of northern Black Codes; i.e., "The Illinois Black Code required every Negro who remained in the state to post a thousand-dollar bond and to carry a certificate of freedom."[10] Further, the fears of working-class whites in numerous northern and western cities that black migrants would cause depressed wages culminated in incidents of physical violence. Among the sites of antebellum race riots were Portsmouth and Cincinnati, Ohio; Utica, Palmyra and New York, New York; Philadelphia, Pennsylvania; and Chicago, Illinois.[11]

W.E.B. DuBois, in his classic work The Philadelphia Negro, describes the antebellum violence in Philadelphia as follows:

> So intense was the race antipathy among the lower classes, and so much countenance did it receive from the middle and upper classes, that there began, in 1829, a series of riots directed chiefly against Negroes, which recurred frequently until 1840, and did not wholly cease until after the war.[12]

The violence and bloodshed of the Philadelphia and Cincinnati race riots were so gruesome that many blacks fled from those cities.

St. Clair Drake and Horace Cayton reported similar incidents in their case study of Chicago, Black Metropolis:

> From time to time during the twenty years preceding the Civil War, Irish workingmen in Chicago rioted against fugitive slaves who secured employment as stevedores, porters, canal bargemen, and general laborers.[13]

Those blacks who remained and those who continued to migrate to northern and western cities were beset with this kind of violence in which the police offered little protection and did so because, unlike the South, those laws allowed blacks to organize and fight for their rights.

The struggle for black rights suffered a devastating setback with the Supreme Court's 1857 Dred Scott decision, which declared that blacks were not citizens and therefore not entitled to Constitutional safeguards enjoyed by white Americans.

After determining that it would be impossible to preserve the Union by proceeding with his preferred plan for emancipation with compensation for the slaveholders and colonization of the freed blacks in other parts of the world, President Lincoln abolished slavery in the United States with the Emancipation Proclamation of 1863. Lincoln's duplicity was shared by many white Americans as illustrated by the dramatic change in American literature before and after the Civil War. The antebellum propagandists rationalized slavery by portraying blacks as loyal, childlike and helpless; while after emancipation "what replaces it, is often enough, an undisguised hatred of Negro which portrays him as little if any better than a beast."[14]

Also following the Civil War, three Constitutional amendments were added to the nation's fundamental laws. These amendments abolished the principle of black inferiority before the law and proclaimed for all persons, without regard to race or color, equal protection of the law. In addition, Congress enacted several laws including the Civil Rights Act of 1875 to provide further meaning to the Civil War amendments.[15]

With the loss of blacks as exploitable slave laborers and the massive black migration to urban southern and western areas, whites began to enforce criminal laws against blacks more vigorously in order to retain some control over them. Several southern states passed new black codes that prohibited freedmen from voting, serving in the military and on juries and assembling without white law enforcement officers present. These enactments precluded black testimony in court except against other blacks and required freedmen to have passes for moving about the land. The codes also prescribed that blacks who refused to work could be fined and hired out by labor contractors. Black youth were subjected to "apprenticeships" until reaching the age of majority.[16]

The convict lease system was revived after the Civil War in the South, and soon 85 to 95 percent of the convict population was black. "The Thirteenth Amendment explicitly authorized 'slavery' or 'involuntary servitude' as punishment for crime, leaving legislatures dominated by the master class free to reintroduce a species of slavery for Negroes and lower-class whites."[17] The convict lease system was dominated by a profit motive for both the lessors and the state governments. Later, this same profit motive directed the chain gangs and prison farms which eventually replaced the convict lease system.

The repressive nature of the new black codes motivated Congress to pass the Reconstruction Act of 1867. The Act decreed that the South be divided into five military districts and that the former confederate states be readmitted into the Union only after ratifying the Fourteenth Amendment, which extended the Constitutional guarantees of equal protection under the law to black Americans. Southern whites' violent overreaction to the terms of Reconstruction has been described as a prolonged race riot. In the decade after the Civil War an estimated 3,500 whites and blacks were killed in the South.[18]

Whites in the South, North and West responded to the franchisement of blacks during Reconstruction ". . . with methods--some extra-legal, others incorporated into state codes--of preventing the Negro's participation in politics."[19] Throughout the South and some border states, armed members of secret societies, such as the Ku Klux Klan, patrolled night and day using intimidation, force, arson and murder to maintain the system of white superiority. The law used to disfranchise blacks was the grandfather clause which restricted voting privileges to those who had voted in 1867 (a year in which former slaves had been prohibited from voting) or to the sons or grandsons of 1867 voters. The grandfather clauses were declared unconstitutional by the Supreme Court finally in 1915, but by then poll taxes and literacy and property ownership tests effectively restricted blacks from exercising their right to vote.[20]

Two case studies provide vivid descriptions of northern violence in response to black voting freedmen. DuBois reports the reaction to the use of black votes to oust incumbent politicians in Philadelphia as follows:

> In the spring elections of 1871 there was so much disorder, and such poor police protection, that the United States marines were called in to preserve order. In the fall elections street disorders resulted in the cold-blooded assassination of several Negroes.[21]

Similarly, Drake and Cayton describe how, three years after the Civil War, members of the Irish working class in Chicago publicly denounced the Reconstruction policies in the South, opposed any federal aid to freedmen, and declared the doctrine of white supremacy. These actions met with the tacit approval of local politicians who, in their efforts to secure the Irish vote, called for restrictions on black migration to Chicago.[22]

As black migration continued and accelerated early in the twentieth century, white citizens responded by segregating the black migrants into one section of the city. "Municipalities gave sanction to this practice by enacting housing segregation ordinances."[23] The result was extreme congestion and overcrowded, unsanitary homes for blacks.

In the South, Jim Crow segregation extended to almost every aspect of black life after the Supreme Court issued its famous "separate but equal" decision, Plessy v. Ferguson in 1896. Unfortunately, the Court was reluctant to assess whether the separate facilities and services that developed were in fact equal. In truth, many public facilities available to whites simply were not available to blacks. The separate facilities which did exist for blacks were vastly inferior to those for whites. In addition, segregation laws prohibited blacks from certain occupations and prescribed that whites and blacks in the same occupations be paid different salaries; i.e., in the South, white teachers "were paid an average of 60 percent more" than black teachers.[24]

In addition to legal segregation, twentieth century black Americans were confronted with continuing violence in the form of race riots and lynchings. White strikers and sympathizers sparked a bloody race riot in East St. Louis in 1917 after blacks were used as strike breakers at a local factory. Blacks were indiscriminately beaten, an estimated 47 to 175 were killed, and more than 6,000 black families were rendered homeless, while "police did little more than take the injured to the hospitals and disarm Negroes."[25] The summer of 1919 was so violent and bloody that it was called the "Red Summer." There were no less than 24 "snow riots" in American cities between the close of the Civil War and the turn of the century.

Between the beginning of the century and the United States' entry into World War I, over 1,100 blacks were lynched. Some victims of the torturous lynchings were "accused" of violent crimes, while others:

> . . . were lynched for such crimes as threatening to sue a white man, attempting to register to vote, enticing a white man's servant to leave his job, engaging in union activities, being disrespectful

> to or "disputing with" a white man, or sometimes for no discoverable reason at all.[26]

Even the black soldiers' participation in World War I did not protect them from racist killings. In the first year after the war, more than 70 blacks were lynched. Fourteen were burned publicly, eleven while still alive. Ten veterans were lynched in their uniforms.[27]

The National Association for the Advancement of Colored People (NAACP) documented the violence perpetrated against black Americans in its study, Thirty Years of Lynchings in the United States, 1889-1922. In 1922 the NAACP sought passage of a federal anti-lynch bill that passed in the House by a healthy margin, but was killed in the Senate by a southern filibuster.[28]

Black organizations also focused on gaining full voting rights for black citizens. In addition to the poll taxes and the literacy and property ownership tests, all the southern states instituted "white primaries" between 1923 and 1932. Also in the South, black citizens were barred by state law from participating in any Democratic primary. The Supreme Court upheld the conduct of white primaries in a 1935 decision, which it finally reversed in subsequent decisions in 1941 and 1944.[29]

Black organizations have fought for more and better jobs for black Americans throughout the twentieth century. The Depression was particularly difficult for blacks as shown in the differential unemployment rates for whites and blacks during that period. Charles Johnson in the Economic Status of Negroes said, "in Philadelphia the unemployment rate of whites in 1929 was 9.0 and of Negroes 15.7, and in 1932 the rate was 39.7 for whites and 56.0 for Negroes."[30] Unions practiced exclusionary policies against blacks during the thirties. Blacks were able to gain entry into some industries only in event of extreme labor shortages, as during the two world wars, or when employers wanted to break a union strike.

Gunnar Myrdal reported in 1944 that blacks were precluded from certain industries in both the North and the South. Further, when blacks were accepted into an industry, they were usually ". . . confined to unskilled occupations and to such semi-skilled occupations as are unattractive to white workers."[31] During World War II, as was true during World War I, the labor shortage in the country allowed for increased job opportunities for black workers. The number of black workers in the civilian defense industry increased rapidly when President Roosevelt issued a Fair Employment Practices Order in response to a threat by civil rights leaders for a massive march on Washington protest demonstration for equal employment.

The housing situation in urban America continued to deteriorate for blacks as the municipal housing segregation ordinances were buttressed by federal policy. Of the 11 million homes built between 1935 and 1950,

> wherever there was federal assistance, the racial policy was laid down in the manual of the Federal Housing Administration that declared, "If a neighborhood is to retain stability it is necessary that properties shall be continued to be occupied by the same social and racial classes."[32]

Along with housing, employment, and educational discrimination, black Americans had to contend with unequal justice in the agencies of the criminal justice system. Myrdal described the inequality of justice for American blacks as follows:

> . . . in criminal cases where only Negroes are involved there is sometimes a disposition on the part of the prosecutors, judges and juries to treat offenses with relative lightness. In matters involving offenses by Negroes against whites, Negroes will often find the presumptions of the courts against them, and there is a tendency to sentence them to a higher penalty than if they had committed the same offense against Negroes . . . . Negro witnesses have been made the butt of jests and horseplay . . . . Negroes are more likely than whites to be arrested under suspicious circumstances. They are more likely to be accorded discourteous or brutal treatment at the hands of the police than are whites. The rate of killing of Negroes by the police is high in many Northern cities. . . .[33]

Myrdal gave numerous other descriptions of the injustices suffered by blacks in the criminal justice system in the forties. He also explained how whites tended to exaggerate the rate of black crime and underestimate white crime to the extent that the crime problem and the black problem became synonymous in the minds of most whites.

With the end of World War II, returning black veterans were confronted at home with the same type of violence and racism which beset the returning black World War I veteran. Six lynchings of black veterans occurred in the South between June 20 and August 8, 1946. In response to this recurring violence and the continuing racial discrimination in America, the NAACP took advantage of the country's increased international status as a free democracy and presented to the United Nations in 1946 "An Appeal to the World." This document "was a factual study of the denial of the right to vote and denial of legal, educational and social rights."[34] Similarly, the Civil Rights Congress, in 1951, presented the United Nations with another petition, "We Charge Genocide," a catalog of lynchings and other acts of violence against American blacks.

Blacks active in the struggle for civil rights were subjected to economic sanctions and to violence:

> Dismissals from jobs, denials of loans, and foreclosures of mortgages were some of the tactics used to decimate the ranks of "agressive Negroes." . . . in 1957 and 1958 Negroes were murdered with impunity in South Carolina, Alabama, Georgia, and other Southern states.[35]

Civil rights victories began in the 1950s after more than two centuries of black struggles against oppression, racism and inequality. In 1954, the Supreme Court ruled that "separate education facilities are inherently unequal" in the Brown v. Board of Education school desegregation case. After unsuccessful attempts in the four prior years, Congress, in 1957, passed the first civil rights bill since 1875, thereby reversing almost a century of a federal hands-off policy regarding civil rights. This law further secured and protected the right to vote and created the U.S. Commission on Civil Rights.

The slow implementation of the school desegregation order of 1954, the lack of enforcement of the 1957 Civil Rights law, continuing racial discrimination in public accommodations, housing and employment, denial of voting rights and violence against blacks were the combined stimuli for action of the Civil Rights Movement. The movement in the 1960s followed the technique of nonviolent mass action; i.e., demonstrations, economic boyotts, picketing and sit-ins. White segregationists reacted violently to this accelerated black effort to attain full equality before the law. As a result, many black lives were lost, among them Mississippi black leader Medgar Evers, who was assassinated outside of his home, and four young black girls attending a Birmingham church service. Evers' murderer was visited in his jail cell by the governor of Mississippi and the murderers of the children were not brought to justice until recent years, almost two decades after this brutal act. Black efforts would not be deterred and culminated in the 1963 March on Washington for Jobs and Freedom which was also the largest public protest rally ever held in America. White violence against blacks and that massive demonstration of a quarter of a million people, along with the assassination of President John Kennedy, set the stage for the most far-reaching civil rights act in the history of the country. The Civil Rights Act of 1964:

> gave the attorney general additional power to protect citizens against discrimination and segregation in voting, education, and the use of public facilities. It forbade discrimination in most places of public accommodation and established a federal Community Relations Service to help individuals and communities solve civil rights problems. It established a federal Equal Employment Opportunity Commission and extended the life of the Commission on Civil Rights . . . One of the most controversial provisions required the elimination of discrimination in federally assisted programs authorizing termination of programs or withdrawal of federal funds upon failure to comply.[36]

The act was passed at a time when, even though token individual achievements led the white public to believe otherwise, the economic gap between blacks and whites had increased, particularly among blue collar and lower income groups. The 1964 unemployment rate for blacks was double that of whites.

Although the 1964 act opened doors for many individual blacks in the housing, educational and employment areas, the masses of black Americans whose expectations had been raised did not see an improvement in their lives due to this landmark legislation and the changing social climate. Their frustrations were ignited by a series of incidents involving police and erupted into the urban riots of the late 1960s. These riots differed from the earlier race riots when whites rampaged through black neighborhoods. The Kerner Commission reported that

> The 1967 disorders . . . involved action within Negro neighborhoods against symbols of white American society--authority and property--rather than against white persons.[37]

The Commission went on to cite hostile police-community relations as a primary cause of the 1967 disorders, but cautioned that the police were the tangible target for black grievances of injustice throughout the entire system of law enforcement and criminal justice. Nevertheless, the Commission acknowledged specific black complaints about police misconduct and inadequate police protection in the ghetto.

It is important to note that the President's Commission on Law Enforcement and the Administration of Justice, in its 1967 volume on the police, identified a history of racially discriminatory personnel practices related to the selection, promotion and assignment of minority police officers. The Commission, calling for vigorous minority recruitment, stated, "The very presence of a predominantly white police force in a Negro community can serve as a dangerous irritant . . . ."[38] Six years later, the National Advisory Commission on Criminal Justice Standards and Goals echoed the earlier Commission's warning that the needed increase in minority police officers would not be achieved ". . . if discrimination continues in the assignment and promotion of personnel within the agency . . . ."[39]

In 1975, the Equal Employment Opportunity Commission (EEOC) reported that, within the 2,303 reporting state and local police units, blacks composed 7.2 percent of the line officers and 2.4 percent of the supervisory and command personnel.[40] The serious problem of predominantly white police forces in American cities with large black populations continues today with such adverse effects as increased killings of black citizens by police[41] and riots by black citizens. The 1980 civil disorders in Dade County, Florida, occurred after the acquittal by an all-white jury of white police oficers who had brutally killed a black man. An analysis of that most recent disorder concluded:

> Recent disorders in Dade County and elsewhere have been in many instances the result of a build-up of narrowly defined but widely shared grievances against the police or criminal justice system. Although deep-seated anger, frustration and disappointment with the role of the police and the criminal justice system in Dade County were not the sole causes of the disorder, few would disagree with the judgment that actions or inactions by the police contributed to and aggravated the potential for violent outbreak.[42]

The frustration and despair of black residents of the Miami riot area were expressed in a citizen's statements to the press:

> This thing has been going on for a long time down here. You can't let your child out on the street without the man fooling with him. It's the police and their routine check. There ain't no routine check if you are white.
>
> All white police officials, all white court systems and all white juries don't let nothing happen to those people. And yet they have been locking up

> black people--including our officials--for years.
>
> It's always a shame when someone gets hurt, but the police are set up to protect white people from their enemies--and that is us.[43]

As they have throughout their history in America, blacks continue to view the law and its agents as oppressors, unconcerned with protecting blacks or their rights. The war on crime initiated by President Richard Nixon and facilitated by the Law Enforcement Assistance Administration (LEAA) has evolved into a war on blacks. LEAA's early emphasis on hardware and technology coupled with its failure to involve communities in crime prevention and law enforcement efforts has served to exacerbate black communities' distrust of the criminal justice system. Black Americans, the predominant victims of black crime, have not been allowed to participate in attempts to solve the crime problem by either state or local law enforcement agencies or by the federal government. The agencies whose histories demonstrated a lack of concern about black-on-black crime were charged with solving this problem but have failed miserably to effect a decrease in crime.

B. Crime in the Black Community

1. The Nature and Extent of Black Crime

The two basic measures of crime in the United States are (1) the Uniform Crime Reports (UCR), published by the Federal Bureau of Investigation (FBI) and (2) the Criminal Victimization Survey, conducted by the U.S. Department of Justice through the National Criminal Justice Information and Statistics Service.

The UCR forms the basis for many federal and local governmental policy decisions. The reports provide not an exact measure of crime but an annual assessment of arrest and reported crime statistics provided by state and local law enforcement agencies to the FBI. For 1979, the UCR reported that 44.1 percent of those persons arrested for violent crimes were black, while 29.4 percent of those persons arrested for property crimes were black. City arrest data are particularly important because blacks have become predominantly urban people. The 1979 UCR data revealed that blacks accounted for 48.4 percent of all city arrests for violent crimes and 31.9 percent of all city arrests for property crime. It is clear from these data that blacks comprise a disproportionate number of arrested persons.

The second method of assessing the extent of crime in the United States is analysis of criminal victimization data. Unlike the UCR data, which is limited to reported crime, the victimization surveys obtain information by conducting personal interviews with individuals in a representative sample of households and commercial firms about their experience with selected crimes of violence and theft. The victimization data have consistently indicated that blacks are criminally victimized in numbers disproportionate to their numbers in the population. As indicated in Table I-1, the black criminal victimization rate exceeded the white rate in 1973, 1975 and 1976. National crime panel surveys of Chicago, Detroit, Los Angeles, New York and Philadelphia in 1972-1973 revealed the following: (1) "For a majority of cities, blacks . . . had significantly higher victimization rates than whites for aggravated assault and robbery without injury . . ."[44]; and (2) "Households headed by members of minority races, mainly blacks, were more likely than households headed by whites to have been burglarized, and except among New Yorkers, to have been victims of motor vehicle theft."[45] A second series of crime panel surveys also indicated a disproportionate rate of burglaries in households headed by blacks. The thirteen cities included in that panel survey series were Boston, Buffalo, Cincinnati, Houston, Miami, Milwaukee, Minneapolis, New Orleans, Oakland, Pittsburgh, San Diego, San Francisco and Washington, D.C. As indicated in Table I-2, only in Washington, D.C., did white households' rate of burglary exceed that of black households. In addition, Dr. Lee Brown, the Council's chairman, analyzed the results of the first victimization survey and determined that the personal crime "victimization rate for black males (85 per 1,000) was higher than that for white males (74 per 1,000)."[46] Further, Brown concluded:

> The survey showed that blacks were more likely to have been victims of rape, robbery and assault. Similarly, black males were more likely than white males to have been victims of aggravated assault.[47]

Also, blacks are victims of homicide in disportionate numbers. Table I-3 shows that the homicide victimization rates for blacks far exceeded the rates for whites for the period 1940-1976. For 1976, the homicide rates for white men, white women, black men and black women were 11.0, 3.4, 82.9 and 17.8. The black male rate was 7.5 times the white male rate, and the black female rate was 5.2 times the white female rate.

Numerous witnesses at the Council's hearings around the country expressed strong concern about the impact of drug use as a stimulus to crime in black communities. Witnesses complained bitterly of an increase in drug-related crimes. Blacks clearly account for a disportionate number of drug arrests. As indicated in Table I-4 below, the Drug Enforce-

Table I-1

Victimization Rates of Crimes Against Persons, by Race and Sex of Victim and Relationship of Victim and Offender: 1973 to 1976

Rates per 1,000 persons, 12 years old and over. Figures include attempted crimes. Data are estimates subject to sampling errors.

Year	Crime	White	Black	Other	MALE White	MALE Black	MALE Other	FEMALE White	FEMALE Black	FEMALE Other	Victim-Offender Relationship Stranger	Victim-Offender Relationship Non-Stranger
1973	Total[a]	31	41	32	43	53	44	20	32	22	21	11
	Rape	1	1	1				2	3	2	1	b
	Robbery											
	With injury	2	5	2	3	7	3	1	3	1	2	b
	Without injury	4	8	4	6	12	7	2	5	2	4	1
	Aggravated assault	9	16	10	14	23	15	5	10	5	6	4
	Simple assault	15	11	15	20	11	19	11	12	11	9	6
	Personal larceny	92	83	91	104	97	103	82	70	80	NA	NA
1975	Total[a]	31	43	33	42	53	44	21	34	23	21	11
	Rape	1	1	1				2	2	2	1	b
	Robbery											
	With injury	2	5	2	3	8	3	1	3	1	2	b
	Without injury	4	9	5	6	14	7	2	5	3	4	1
	Aggravated assault	9	14	10	14	19	14	5	11	5	6	3
	Simple assault	16	13	16	21	12	20	12	14	12	9	7
	Personal larceny	97	90	96	108	110	108	87	73	85	NA	NA
1976	Total[a]	31	44	33	42	55	43	21	36	23	21	12
	Rape	1	2	1	b	b	b	1	3	1	1	b
	Robbery											
	With injury	2	4	2	2	6	3	1	3	2	2	b
	Without injury	4	10	4	6	15	7	2	6	2	4	1
	Aggravated assault	9	16	10	14	19	14	5	13	6	6	4
	Simple assault	16	13	15	20	15	19	12	12	12	9	7
	Personal larceny	97	87	96	107	101	106	88	75	87	NA	NA

Source: Law Enforcement Assistance Administration, Criminal Victimization in the United States, annual.

[a] Excludes personal larceny.

b Less than 0.5.

NA Not available.

Table I-2

Household Burglary Rates By Race of Head of Household In Thirteen American Cities (Rate per 1,000 households)

City	White	Black
Boston	138	204
Buffalo	88	133
Cincinnati	119	211
Houston	142	234
Miami	61	177
Milwaukee	126	303
Minneapolis	174	214
New Orleans	102	125
Oakland	164	194
Pittsburgh	81	139
San Diego	136	165
San Francisco	112	182
Washington, D.C.	79	73

Source: U.S. Department of Justice, Law Enforcement Assistance Administration, National Criminal Justice Information and Statistics Service, *Criminal Victimization Surveys in 13 American Cities*, (Washington, D.C.: U.S. Government Printing Office, June 1975), pp. 20, 38, 58, 76, 112, 132, 152, 172, 192, 210, 230 and 248.

Table I-3

Homicide Victims by Race and Sex: 1940-1976

(Rates per 100,000 resident population in specified group, 15 years old and over)

YEAR	TOTAL	HOMICIDE VICTIMS					
		White			Black and Other		
		Male	Percent	Female	Male	Percent	Female
Number							
1940	8,329	2,977	45.3	796	3,670	54.7	886
1945	7,547	2,759		791	3,210		787
1950	7,942	2,586		952	3,503		901
1955	7,418	2,439		922	3,191		866
1960	8,464	2,832		1,154	3,437		1,041
1965	10,712	3,660		1,379	4,488		1,185
1968	14,686	5,106		1,700	6,417		1,463
1969	15,477	5,215		1,801	6,951		1,510
1970	16,848	5,865		1,938	7,413		1,632
1971	18,787	6,455		2,106	8,357		1,869
1972[a]	19,638	6,820		2,156	8,822		1,840
1973	20,465	7,411		2,575	8,429		2,050
1974	21,465	7,992		2,656	8,755		2,062
1975	21,310	8,222		2,751	8,331		2,006
1976	19,554	7,568		2,547	7,574		1,865
Rate[b]							
1940	8.4	6.7		1.8	79.9		18.5
1945	7.7	6.8		1.7	71.4		15.2
1950	7.2	5.3		1.9	67.4		16.2
1955	6.4	4.8		1.7	57.8		14.4
1960	6.9	5.3		2.0	56.2		15.6
1965	8.0	6.3		2.2	66.6		15.9
1968	10.5	8.5		2.6	90.0		18.2
1969	10.9	8.6		2.7	95.1		18.3
1970	11.6	9.5		2.9	95.9		18.5
1971	12.6	10.2		3.1	105.9		20.7
1972[a]	13.0	10.6		3.1	108.3		19.7
1973	13.3	11.3		3.6	100.7		21.4
1974	13.7	12.0		3.7	101.7		20.9
1975	13.4	12.2		3.8	93.9		19.7
1976	12.1	11.0		3.4	82.9		17.8

[a] Based on a 50 percent sample of deaths.

[b] Rate based on enumerated population figures of April 1 for 1940, 1950, 1960, and 1970; July 1 estimates for other years.

ment Administration (DEA) estimates that blacks represented 26 percent of drug arrests nationally in 1977.

Table I-4

Drug Arrests by Race in 1977

Race	Percentage of Drug Arrests	Percentage in Population
White (Not Hispanic)	56	76
Black (Not Hispanic)	26	11

Source: Drug Enforcement Administration, Special Report, No. 76

A frequently used indicator of the extent of black crime is the black imprisonment rate. Table I-5 shows that 58,900 (42 percent) of the inmates of local U.S. jails in 1972 were black. Similarly, Richard Velde, former administrator of the Law Enforcement Assistance Administration reported that a 1973 LEAA prison survey found that about 48 percent of all U.S. prisoners were black.[48]

Caution should be used when evaluating arrest and imprisonment statistics as measures of the extent of black crime. Many researchers have noted the inequities involved in police arrest reports to the FBI. Gwynne Peirson argues that the police also exercise their arrest powers selectively: "The police 'prove' Blacks commit most crimes by arresting mostly blacks."[49] Peirson further questions prison commitment rates, stating that, although the black arrest rate is twice the white arrest rate, the black prison commitment rate is six times the white rate. He then argues that the black imprisonment rate reflects the propensity of agents of the court to punish blacks more severely than whites for similar criminal violations. Peirson objects to the use of arrest statistics and prison commitment rates to "prove" the criminality of blacks.[50]

Despite questions regarding exact measures, crime remains a significant problem for members of black communities, as illustrated by the numerous blacks who testified before the Council. Witnesses repeatedly told the Council that, in contrast to media images of the white, middle-class American as the typical crime victim, blacks are overwhelmingly the most likely victims of crime. Many witnesses stated that they believe there is no escaping criminal victimization for blacks. They live in a state of fear and accept the fact

Table I-5

Reason for Retention and Selected Socioeconomic Characteristics of Jail Inmates, by Race, 1972

Characteristic	White	Black	Other
Total inmates	79,600	58,900	141,600
Serving sentence	35,400	23,200	60,200
Awaiting trial	26,300	23,800	50,800
Other adjudication status	18,200	11,900	30,500
Education[a]			
8 years or less	20,300	11,000	32,200
9-12 years	49,500	34,500	94,500
Over 12 years	10,100	4,100	14,300
Age[b]			
14-17 years	2,900	2,200	5,200
18-24 years	33,000	27,300	61,500
25 years and over	43,900	29,400	74,700
Marital status			
Never married	34,400	34,400	70,500
Separated, divorced, or widowed	25,200	11,400	37,100
Prearrest annual income			
Less than $2,000	33,500	26,800	61,800
$2,000-$2,999	8,600	7,000	16,100
$3,000-$7,499	24,800	19,000	44,400
$7,500 and over	10,800	4,300	15,100
Unknown	2,200	2,000	4,300

Note: Jail--A locally administered institution with authority to retain adults for 48 hours or longer.

[a] Excludes 600 inmates for whom data were not available.

[b] Data include a small number of persons for whom information was not available, not shown separately.

Source: U.S. Law Enforcement Assistance Administration, Survey of Inmates of Local Jails: Advance Report, and unpublished data.

that little will be done by government or law enforcement agencies to combat crime effectively, especially in black communities. Many complained about the disproportionate number of homicides in the black communities and generally about the drastic level of black-on-black crime.

2. The Impact of Crime on the Black Community

> It is our belief, and it is the basic premise of this issue, that black-on-black crime has reached a critical level that threatens our existence as a people. It is a threat to our youth, to our women, to our senior citizens, to our institutions, to our values. And although we are not responsible for the external factors that systematically create breeding grounds for social disorder, we cannot avoid the internal responsibility of doing everything to solve a problem that is rending the fabric of our lives.[51]

Publisher John H. Johnson introduced the August 1979 special issue of Ebony magazine with the previously cited quote. Various articles in that issue discussed the serious implications of the current high level of black-on-black crime which concerns many black Americans.

The psychological consequences of black crime are exhibited in the extreme level of fear within the black community, as described by many witnesses before the Council. In addition, 1976 National Crime Survey data indicate that 81 percent of black Americans believe that crime is increasing in their communities. Further, 61 percent believe that the probability of becoming victims of robbery or assault have also increased. Blacks' fear of crime is particularly intense at night; only 9 percent feel safe in their own neighborhoods after dark. Fifty-four percent reported having limited their nighttime activities in an effort to avoid being victimized.[52]

Crime also has a serious economic impact on the black community. Andrew Brimmer, a former member of the Board of Governors of the Federal Reserve System, estimated the cost of crime to blacks in 1965 was about $2.3 billion, 11 percent of the estimated $21 billion crime cost to the nation as a whole. Brimmer's estimate of the 1969 crime cost to the black community was $3 billion of the $25 billion cost to the nation as a whole. Further extrapolation of Brimmer's equation indicates that crime cost the black community $13.3 billion of the total national cost of $88.6 billion in 1974.[53]

An Ebony article described how crime affects businesses in the black community and reported that business owners must shorten store hours and "absorb the rising costs of burglar alarms, window bars, iron gates and other security devices to thwart criminals." Of course, those costs are passed on to black consumers in the form of higher prices for goods and services.[54] The black community's concern about crime, although extremely strong today, actually dates back to the beginning of the century. Three of the many forums on "Negro problems" held in predominantly black colleges focused specifically on black crime (Atlanta University; 1904; Hampton Institute, 1909; and Tuskegee Institute, 1931, 1946, and 1952). It is appalling that the problem of black crime has been clearly described and explained by black leaders and scholars for nearly a century but their insights have been ignored by the white majority until its effects spilled over into their residential neighborhoods and commercial districts during the last decade. The societal causes of black crime have been allowed to fester and spread by culpable white govenment officials who refused to respond to the recommendations of the nation's black leadership on the matter.

3. Causes of Black Crime

W.E.B. DuBois was one of the first black researchers to study crime and its causes in his 1899 pioneering study, The Philadelphia Negro. DuBois analyzed crime among Philadelphia blacks from the seventeenth century until 1896. Focusing on the period 1864 until 1896, DuBois concluded:

> . . . young men are the perpetrators of serious crime among Negroes; that this crime consists mainly of stealing and assault; that ignorance, and immigration to the temptations of city life are responsible for much of this crime but not for all; that deep social causes underlie the prevalence of crime and they have so worked as to form among Negroes since 1864 a distinct class of habitual criminals: that to this criminal class and not to the great mass of Negroes the bulk of the serious crime perpetrated by this race should be charged.[55]

It is significant to note that the deep social causes cited by DuBois have been institutionalized in American cities and that they continue to sustain a class of habitual criminals within the black community in 1981. Further, American society continues to identify crime and blacks in general rather than recognize that the limitations and cruelties of racist economic and social policies have created a growing number of blacks whose outlet for their oppression and poverty is violence and crime. DuBois explained how the peculiar environment in which blacks work and live is a cause of crime:

> . . . homes badly situated and badly managed, with parents untrained for their responsibilities; the influence of social surroundings which by poor laws and inefficient administration leave the bad to be made worse, the influence of economic exclusions which admits Negroes only to those parts of the economic world where it is hardest to retain ambition and self-respect and finally that indefinable but real and mighty moral influence that causes men to have a sense of manhood or leads them to lose aspiration and self-respect.[56]

The manner in which this peculiar environment has been institutionalized has been described in detail in the historical perspective section of this chapter; i.e., all-inclusive Jim Crow segregation in the South, housing segregation ordinances in northern and western cities, black exclusion from labor unions, occupational and industrial segregation, educational segregation, exclusion from voting, etc.

That the experience of black Americans differed from that of foreign immigrants to American cities is well documented. Stephan Thernstrom vividly described how black Bostonians remained mired in poverty from 1860 through 1940, while members of European immigrant groups experienced social and economic upward mobility. Thernstrom explained that, although blacks were generally limited to unskilled industrial jobs, in those instances where they obtained semi-skilled or skilled occupations they were forced out of their jobs with every new wave of European immigration.[57]

Earl Moses conducted a comparative study of crime in four socio-economically equal Baltimore neighborhoods, two black and two foreign born. Noting that, although in the same low occupational lines, blacks were a step below whites on the occupational ladder, Moses explained the higher black crime rates:

> A more reasoned explanation is to be found in the poverty of life in the deteriorated areas inhabited by them. One recognizes this poverty on every hand and in a variety of its manifestations. Because of it, life in these areas has been reduced largely to organic survival; and the reflex of this is an organic plane of living. The poverty is more than economic; it is pervasive in character: bad housing, overcrowding, restricted areas of settlement, limited outlets of expression, as in recreation, restricted employed opportunities, etc. On every hand, the Negro is hedged in by racial proscriptions.[58].

Moses concludes that these conditions spawned higher black crime rates.

Similarly, Morris Forslund presents other factors explaining higher black crime rates:

> . . . the overrepresentation of Negroes in high crime risk lower socioeconomic strata; the relative lack of opportunity for Negroes to achieve their goals through legitimate means; and the overrepresentation of Negroes among populations of high crime rate deteriorated sections of our cities which provide greater opportunity both to learn criminal behavior patterns, values, and motivations and to engage in criminal behavior.[59]

Some criminal justice practitioners have acknowledged the significance of socioeconomic factors and black crime. Speaking before a Police Foundation forum on upgrading the police, Robert DiGrazia, a former Boston police commissioner, addressed the subject as follows:

> There is one other thing few police chiefs are doing--leveling with the public about crime. Most of us are not telling the public that there is relatively little the police can do about crime. We are not letting the public in on our era's dirty little secret" That those who commit the crime which worries citizens the most--violent street crime--are, for the most part, the products of poverty, unemployment, broken homes, rotten education, drug addiction and alchohlism, and other social economic ills about which the police can do little, if anything.[60]

Patrick V. Murphy, president of the Police Foundation and former chief of several of the nation's largest police departments, recounted before the Joint Economic Committee of Congress what his experience as a police officer and as a chief-of-police taught him about the relationship between unemployment and crime:

> From my earliest days in police work 30 years ago, I became aware of the social costs of unemployment. Where there was a high rate of unemployment, there was a degradation and dislocation of the individual, the family, and the neighborhood. And with degration and dislocation, particularly of the family, are found those conditions which encourage crimes, especially homicide, rape, street robbery,

> and burglary--the type of crime which has turned many city neighborhoods into warrens of fear.
>
> As the chief police official of New York City, Detroit, Washington, D.C., and Syracuse, New York, I found that whenever census tract data showed areas of high unemployment, there were also rates of crime 50 to 100 times as high as in other parts of these cities. In areas where there is a high rate of long-term unemployment, there is also an intensive concentration of social problems: alcoholism, drug abuse, mental illness, violence-ridden schools. In the parts of cities where unemployment is the highest, education is usually poorest. Where the map shows high unemployment rates, there are often hostilities flowing from centuries of racial discrimination and the greatest number of victims of economic injustice and exploitation.[61]

The Council believes, after reviewing historical, economic and sociological evidence and listening to the testimony of witnesses at the hearings held around the country, that black crime is rooted in concrete social and economic conditions. These conditions consist of discrimination, poverty, overcrowded housing, social marginality, and most of all, joblessness. In a fundamental sense, crime in the streets is the product of desperation--a desperation rooted in a system that consigns millions of black Americans to poverty, forces them to live in decaying environments, and resigns them to the view that the future will be merely a repetition of the past and certainly no ground for hope. Under such circumstances, the most vulnerable individuals embrace the view that anything ensuring their survival, whether it is petty thievery, selling dope, rackets, or even participation in violence, is more desirable than giving in or giving up to systematic forces which provide few viable options for legions of black Americans. When the stakes are survival, it should not be surprising that criminal activity comes to be viewed by offenders as an opportunity rather than a cost, normal behavior rather than deviance, and a potentially profitable enterprise that is far superior to an indecent existence.

Expressing a similar view on this point, Washington Post columnist William Raspberry astutely observed,

> My own guess is that most criminals are gamblers who weigh the likely consequences of their actions against the probable gains . . . . The crucial question is: What have I got to lose? For members of the jobless, disaffected and desperate subcul-

> ture. . . the answer often comes back: not much.[62]

Further, added Raspberry, "We are not likely to deter members of this group unless we see to it that they have reasonable and noncriminal alternatives, a stake in an orderly society."[63]

In their assessment of the socioeconomic conditions in the black community, the Council examined four mechanisms by which racial inequality is maintained: occupational, employment, income and housing differentials.

a. Occupational Differentials. The Council examined occupational differentials to determine whether there has been any shift of black workers into better occupations from which they had been excluded previously. It is, however, very difficult to measure occupational mobility. Because of the frequent layoffs and displacements experienced by black workers, there is a high rate of occupational change that does not indicate upward mobility. Perhaps the best measurement to date of upward mobility is an index developed by the U.S. Civil Rights Commission based on the average change in occupational prestige scores of persons who changed occupations between 1965 and 1970. Table I-6 shows the mean occupational prestige values for seven ethnic groups and whites by gender, as well as the ratio of those values to the white male population for the years 1960, 1970 and 1976. The average occupational prestige value for black men increased from 70 percent of that of white men in 1960 to 76 percent in 1970 and 77 percent in 1976; while the average occupational prestige value of black women increased from 69 percent of that for white men in 1960 to 76 percent in 1970 and 81 percent in 1976. Table I-7 presents the Commission's measures of occupational mobility. This table indicates that in 1970, black men who had different occupations in 1965 had, on the average, increased their occupational prestige 125 perent of the white male increase. Black women during the same period had increased their occupational prestige 98 percent of the white male increase. In addition to these measures, which do not reflect the conditions of black men and women who became unemployed in the 1965-1970 period, the significance of the small increase in average occupational prestige for blacks should be tempered by the recognition that ". . . blacks in v886 were about 50 percent more likely to be overqualified . . . they were about 25 percent more likely to be overqualified at the college level."[64] (See Tables I-8 and I-9.)

Table I-10, which provides measures of occupational segregation, shows that, for the group to have the identical occupational distribution as white men, 44.7, 44.3 and 37.9 percent of black men would have had to change occupations in

Table I-6

Occupational Prestige

	Raw Measure[a]			Social Indicator Values[b]		
	1960	1970	1976	1960	1970	1976
Males						
Amer. Ind./Alask. Nat.	25.7	30.8	33.9	.69	.79	.86*
Blacks	25.9	29.6	30.5	.70	.77	.77
Mexican Americans	26.4	39.8	30.4	.71	.77	.77
Japanese Americans	36.2	39.5	40.8	.98	1.02	1.03
Chinese Americans	39.2	41.5	43.9	1.06	1.07	1.11
Filipino Americans	27.6	33.8	37.0	.74	.87	.94
Puerto Ricans	28.8	31.2	32.1	.78	.80	.81
Majority	37.1	38.9	39.5	1.00	1.00	1.00
Females						
Amer. Ind./Alask. Nat.	27.7	32.3	33.5	.75	.83	.85
Blacks	25.5	29.6	32.0	.69	.76	.81
Mexican Americans	28.9	29.8	30.0	.78	.77	.76
Japanese Americans	34.6	37.5	36.1	.93	.96	.91
Chinese Americans	37.5	39.2	38.3	1.01	1.01	.97
Filipino Americans	34.6	39.8	40.3	.93	1.02	1.02
Puerto Ricans	31.0	33.9	32.9	.84	.87	.83
Majority	38.0	38.8	38.8	1.02	1.00	.98

[a] Mean Occupational Prestige Value.

[b] Ratios of raw measure to the majority male population.

* This can be interpreted as follows: "In 1976, on the average, the prestige values of American Indian and Alaskan Native males' occupations were 86 percent of the average prestige values for majority males."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D.C., August 1978, p. 36.

Table I-7

Occupational Mobility

	Raw Measure[a]	Social Indicator Values[b]
	1965-1970	1965-1970
Males		
Amer. Ind./Alask. Nat.	1.85	.96*
Blacks	2.40	1.25
Mexican Americans	2.73[c]	1.42
Japanese Americans	2.75	1.43
Chinese Americans	.71	.37
Pilipino Americans	-.13	-.07
Puerto Ricans	2.12	1.10
Majority	1.92	1.00
Females		
Amer. Ind./Alask. Nat.	.89	.46
Blacks	1.88	.98
Mexican Americans	.56	.29
Japanese Americans	.34	.17
Chinese Americans	-3.45	-1.80
Pilipino Americans	-3.78	-1.97
Puerto Ricans	.78	.41
Majority	1.37	.71

[a] The average change in prestige scores for those who changed occupations between 1965 and 1970.

[b] Ratios of raw measure to the majority male population.

[c] The difference between this value and the majority benchmark is statistically significant at the 0.10 level.

* This can be interpreted as follows: "In 1970, the American Indian and Alaskan Native males who had different occupations in 1965 had, on the average, increased their occupational prestige 96 percent of the majority male average increase."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D August 1978, p. 40.

Table I-8

High School Overqualification

	Raw Measure[a]			Social Indicator Values[b]		
	1960	1970	1976	1960	1970	1976
Males						
Amer. Ind./Alask. Nat.	71.7	59.5	60.5	1.78	1.58	1.37*
Blacks	70.2	66.1	67.2	1.75	1.76	1.52
Mexican Americans	55.6	56.8	59.6	1.38	1.51	1.35
Japanese Americans	51.8	43.4	48.4	1.29	1.15	1.10
Chinese Americans	34.6	33.8	33.8	.86	.90	.98
Pilipino Americans	62.6	49.3	49.5	1.56	1.31	1.12
Puerto Ricans	58.2	54.8	60.8	1.45	1.46	1.38
Majority	40.2	37.6	44.2	1.00	1.00	1.00
Females						
Amer. Ind./Alask. Nat.	56.5	48.0	53.0	1.40	1.28	1.20
Blacks	65.1	53.0	56.1	1.62	1.41	1.27
Mexican Americans	42.8	42.0	52.5	1.06	1.12	1.19
Japanese Americans	44.5	35.4	50.8	1.11	.94	1.15
Chinese Americans	27.2	25.7	48.3	.68	.68	1.09
Pilipino Americans	35.8	33.2	34.8	.89	.88	.79
Puerto Ricans	54.0	38.5	59.0	1.34	1.02	1.33
Majority	33.4	29.9	49.0	.83	.80	1.11

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[a] The percentage of high school graduates who are employed in occupations that require less than a high school degree.

[b] Ratios of raw measure to the majority male populaton.

* This can be interpreted as follows: "In 1976 the high school overqualification rate for American Indian and Alaskan Native males was 37 percent higher than (or 1.37 times) the rate for majority males."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D.C., August 1978, p. 18.

Table I-9

College Overqualification

	Raw Measure[a]			Social Indicator Value[b]		
	1960	1970	1976	1960	1970	1976
Males						
Amer. Ind./Alask. Nat.	51.6	49.2	51.9	1.21	1.18	1.16*
Blacks	58.8	52.6	55.0	1.38	1.26	1.23
Mexican Americans	46.9	47.3	46.5	1.10	1.13	1.04
Japanese Americans	52.4	44.3	49.4	1.23	1.06	1.10
Chinese Americans	48.2	38.3	51.3	1.13	.92	1.15
Pilipino Americans	48.1	45.1	56.2	1.13	1.08	1.26
Puerto Ricans	52.9	44.7	41.0	1.24	1.07	.92
Majority	42.7	41.7	44.7	1.00	1.00	1.00
Females						
Amer. Ind./Alask. Nat.	46.2	38.7	46.6	1.08	.93	1.04
Blacks	41.6	35.1	41.3	.97	.84	.92
Mexican Americans	28.1	31.7	38.8	.66	.76	.87
Japanese Americans	32.3	35.0	41.1	.76	.84	.92
Chinese Americans	39.0	34.5	51.2	.91	.83	1.14
Pilipino Americans	37.1	38.2	39.6	.87	.92	.89
Puerto Ricans	42.2	29.8	50.4	.99	.71	1.13
Majority	29.8	24.7	45.4	.70	.59	1.02

[a] The percentage of persons with at least one year of college who are employed in occupations that typically require less education.

[b] Ratios of raw measure to the majority male population.

* This can be interpreted as follows: "In 1976 the college overqualification rate for American Indian and Alaskan Native males was 16 percent higher than (or 1.16 times) the rate for majority males."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D.C., August 1978, p. 20.

Table I-10

Occupational Segregation[a]

	Compared with Majority Males			Compared with Majority Females		
	1960	1970	1976	1960	1970	1976
Males						
Amer. Ind./Alask. Nat.	44.1	38.2	35.7*			
Blacks	44.7	44.3	37.9			
Mexican Americans	36.7	36.6	38.2			
Japanese Americans	28.9	31.3	41.5			
Chinese Americans	50.6	52.2	61.4			
Pilipino Americans	50.7	46.0	59.7			
Puerto Ricans	49.2	44.1	50.4			
Females						
Amer. Ind./Alask. Nat.	69.1	70.7	69.4	47.1	31.5	33.8
Blacks	72.4	71.1	69.3	52.4	40.4	35.8
Mexican Americans	63.5	68.3	75.1	31.0	27.5	36.9
Japanese Americans	63.8	68.9	72.1	26.6	22.5	32.6
Chinese Americans	71.8	70.9	79.7	36.4	34.1	52.9
Pilipino Americans	69.0	73.0	79.2	40.9	42.2	48.3
Puerto Ricans	71.6	70.9	78.9	53.9	37.7	48.3
Majority	62.4	65.8	66.1	-	-	-

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[a] Standard tests of statistical significance do not apply to this indicator. If, however, the indicator value is viewed as a normal percentage, every percentage value presented in the table is significantly different from 0.0, which is the reference point for equality for this indicator.

* This can be interpreted as follows: "In 1976, at least 35.7 percent of American Indian and Alaskan Native males would have had to change occupations in order to have an occupational distribution identical to the majority males."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D.C., August 1978, p. 42.

1960, 1970 and 1976 respectively. Although these statistics represent minimal improvement for black men between 1960 and 1976, the level of occupational segregation remains alarming. The disparity is greater and the rate of improvement in occupational distribution is worse for black men than for white men. For the group to have the identical occupational distribution as white men, 72.4, 71.1, and 69.3 percent of black women would have had to change occupations in 1960, 1970 and 1976 respectively. The disparity between white and black women is not as great, but this is due largely to the tremendous disparity between the occupational distributions of white men and women. Still, for the group's occupational distribution to be identical to white women, 52.4, 40.4 and 35.8 percent of black women would have had to change occupations in 1960, 1970 and 1976 respectively.

b. Unemployment Differentials. Unemployment, more than any other indicator, demonstrates consistent racial inequality. The black unemployment rate has consistently averaged about twice that of whites since 1960, as has the ratio of black unemployment to white unemployment. The data in Figure I-1 indicate that this disparate ratio between blacks and whites is increasing. Black male and female workers moved from having approximately twice the unemployment rate of white men in 1960 and 1970 to nearly three times the white male rate in 1976.

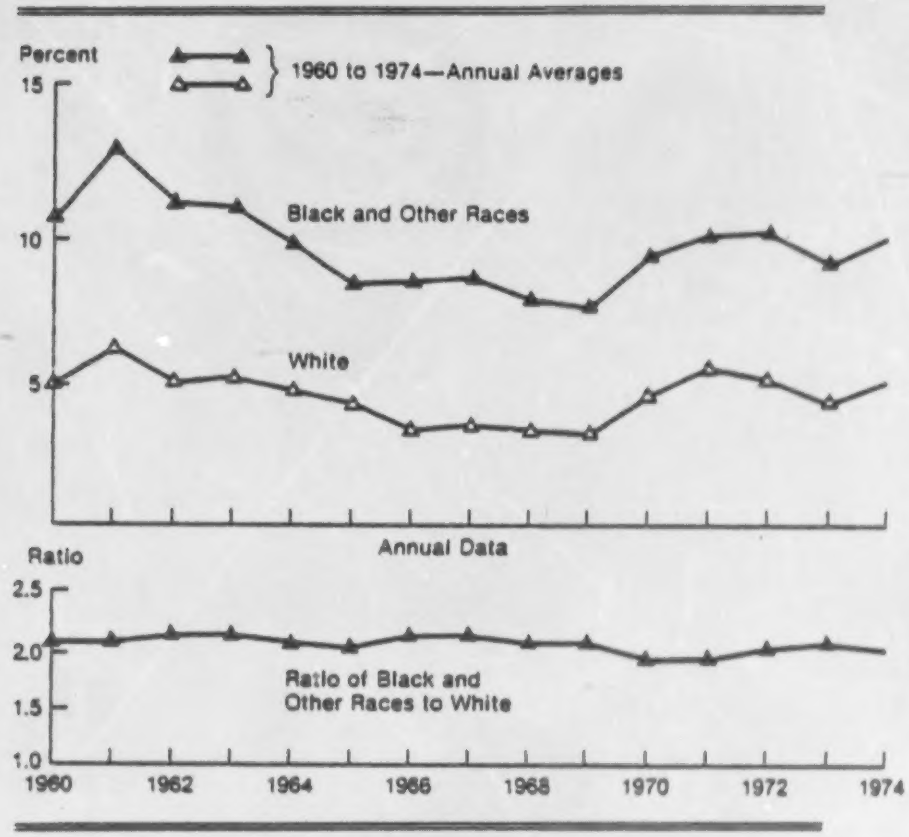
It should be noted that these unemployment statistics underrepresent the extent of black unemployment significantly insofar as black workers are more likely to become discouraged, cease seeking employment, and are dropped from unemployment statistics. The National Urban League (NUL) has developed the Hidden Unemployment Index to include discouraged black workers. For example, the official black unemployment rate in the first quarter of 1975 was 1.5 million. The NUL Hidden Unemployment Index on the other hand indicated that the actual black unemployed numbered 3 million or 26 percent of the black labor force.[65] The NUL reported further that:

> . . . blacks are less likely than whites to receive unemployment insurance because (1) their jobs are less likely to be covered, (2) they are less likely to accumulate a significant number of continuous weeks of work to establish eligibility and (3) the black unemployed are more likely than whites to fall into the ineligible categories of new entrants, re-entrants, and job leavers.[66]

The statistical relationship between unemployment and crime is difficult to show because of problems involved in measuring the data. Nevertheless, in a major study for the

Figure I-1

Unemployment Rates, 1960-1974



Source: Adapted from U.S. Department of Labor, Bureau of Labor Statistics.

Joint Economic Committee of Congress, Professor Harvey Brenner of Johns Hopkins University estimated the social costs of national economic policy as it affects mental and physical health, and criminal aggression by using regression techniques in an analysis of data from three states and three counties from 1940 until 1973. Although Brenner is careful to point out that regression analysis does not establish causation, he does report a consistent pattern of relationship among national economic changes, the several social measures that he used, and the unemployment rate. "Unemployment plays a statistically significant role in relation to social trauma for each of the indices of social cost and for virtually all ages, both sexes and for whites and nonwhites in the United States."[67] The social indices Brenner used were cardiovacular disease, suicide, homicide and imprisonment rates.

c. Income Differentials. A comparison of average family incomes for the period 1950 and 1976 indicates that blacks and other races received incomes ranging from one-half to two-thirds of white family incomes during this period. (See Table I-11.) Median household per capita income reflects the average income available to each individual in a family unit. Using that measure overcomes the problem of differing family patterns, which limits the utility of the median family income statistic. As indicated in Table I-12, in 1975 members of households headed by blacks had a median household per capita income that averaged 52 percent of the median for members of families headed by whites. That statistic represents a very small improvement since 1959. The situation for households headed by black females is even worse. In 1975, members of households headed by black females had a median household per capita income that was only 30 percent of the median of majority-headed households. Also important to note is "under current Federal procedures for defining and measuring poverty, in 1974 black people were almost three times more likely to be poor than whites."[68] The difference between the median family income of whites and that of blacks increased almost 10 percentage points between 1970 and 1980. In 1970, the median family income of whites was 63 percent greater than the median family income of blacks; in 1980 the difference was 72.8 percent greater. Median family income--that point at which half make more and half make less--increased for whites from $10,236 to $21,904 in 1980; for blacks it increased from $6,279 to $12,674. Such differences, the Council maintains, perhaps explain the difference of social outcomes between blacks and whites.

d. Housing Differentials. Repeatedly, the correlation between overcrowded housing conditions and crime have been asserted in the literature and by Council witnesses. Data of 1970 indicate that black-headed rental and owner occupied

Table I-11

Median Income of Families: 1950 to 1976

Year	Black and Other Races	White	Ratio of Black and Other Races to White
1950	$1,869	$3,445	0.54
1951	2,032	3,859	0.53
1952	2,338	4,114	0.57
1953	2,461	4,392	0.56
1954	2,410	4,339	0.56
1955	2,549	4,605	0.55
1956	2,628	4,993	0.53
1957	2,764	5,166	0.54
1958	2,711	5,300	0.51
1959	3,161	5,893	0.54
1960	3,233	5,835	0.55
1961	3,191	5,981	0.53
1962	3,330	6,237	0.53
1963	3,465	6,548	0.53
1964	3,839	6,858	0.56
1965	3,994	7,251	0.55
1966	4,674	7,792	0.60
1967	5,094	8,234	0.62
1968	5,590	8,937	0.63
1969	6,191	9,794	0.63
1970	6,516	10,236	0.64
1971	6,714	10,672	0.63
1972	7,106	11,549	0.62
1973	7,596	12,595	0.60
1974	8,265	13,356	0.62
1975	9,321	14,268	0.65
1976	9,821	15,537	0.63

Source: U.S. Bureau of the Census, Current Population Reports, Special Studies, Series P-23, No. 54, The Social and Economic Status of the Black Population in the United States, 1974, p. 25; and U.S. Bureau of the Census, Current Population Reports, Series P-60, No. 107, 2, p. 9.

Table I-12

Median Household Per Capita Income

	Raw Measure[a]			Social Indicator Values[b]		
	1959	1969	1975	1959	1969	1975
For All Households						
Amer. Ind./Alask. Nat.	$ 467	$1122	$2453	.32	.43	.57*
Blacks	680	1303	2263	.46	.50	.52
Mexican Americans	742	1334	2130	.50	.51	.49
Japanese Americans	1680	3184	6105	1.14	1.22	1.41
Chinese Americans	1416	2449	3867	.96	.94	.89
Pilipino Americans	1145	2208	3897	.78	.85	.90
Puerto Ricans	869	1362	2153	.59	.52	.50
Majority	1472	2601	4333	1.00	1.00	1.00
For Female-Headed Households						
Amer. Ind./Alask. Nat.	378	711	1310	.26	.27	.30
Blacks	399	783	1310	.27	.30	.30
Mexican Americans	428	808	1228	.29	.31	.28
Japanese Americans	1168	2051	2341	.79	.79	.54
Chinese Americans	1309	2163	1778	.89	.83	.41
Pilipino Americans	569	999	2333	.39	.38	.54
Puerto Ricans	716	759	1252	.49	.29	.29
Majority	1099	1658	2568	.75	.64	.59

[a] The median household per capita income is based on the income distribution of the total personal income for persons not living in a family situation and each family member's equal share of their family income. Because this indicator is based on medians, standard techniques for estimating sampling error to not apply.

[b] Ratios of raw measure to the majority male population.

* This can be interpreted as follows: "In 1975, members of American Indian and Alaskan Native headed households had a median household per capita income that was 57 percent as much as the median for members of majority-headed households."

Source: Social Indicators of Equality for Minorities and Women: A Report of the U.S. Commission on Civil Rights, Washington, D.C., August 1978, p. 50.

households were more than twice as likely to live in overcrowded housing than were white-headed households. These disparities have numerous policy implications, especially regarding crime.

The Council concluded that the socioeconomic conditions acknowledged to be the breeding ground for crime continue to plague black communities. Just as it is necessary to eradicate swamplands in order to destroy breeding grounds for malaria-carrying mosquitoes, the Council believes that the government must begin with a commitment to better housing, full employment and equal access to social, economic and political institutions in order to achieve major reductions of crime in the black community.

C. The Administration of Criminal Justice

> The administration of justice itself is from beginning to end so much a part of the whole system of Negro-white social relations that it must be viewed not only as a process which discriminates against Negroes and thus biases the statistics of crime, but also a direct and indirect causative factor in the production of Negro crime.[69]

With this conclusion, Guy Johnson indicted the criminal justice system for perpetuating crime that it is mandated to control. A similar view is held by Ramsey Clark, a former U.S. Attorney General. Clark presented the following criticism of the federal government's so-called war on crime and its emphasis on increased manpower, technology and prisons:

> More untrained police in communities where relations with the public are hostile, where crime isn't reported, where riots are a constant risk, is not in the public interest. More judges where there is no effort at court administration, where techniques of efficient docket control are not developed, will only diminish the role of the individual judge and the chance for equal justice. More juvenile detention homes that brutalize the young, more jails where homosexuality is rampant, more prisons hardening criminals will not enhance public safety.[70]

The criminal justice system as described by both Johnson and Clark is, at best, an extreme temporary control mechanism which in the long run keeps itself in business by fueling hostility and producing tougher criminals.

Former Mayor Maynard Jackson of Atlanta, Georgia, told the Council, "There is no equality under the law....Black people still are the oppressive objectives of a disproportionately unjust system."[71] The inequities of the criminal justice system as it relates to blacks has been described by many. In an assessment of the criminal justice system, a noted criminologist concluded that:

> . . . once arrested, Black suspects are more likely to be jailed rather than bailed, more likely to be convicted than acquitted, and more likely to receive stiff sentences. This claim has been supported by other evidence which revealed that Blacks are arrested between three and four times more than whites. Blacks (41.7%) are adjudicated guilty more than whites (28.3%), and among offenders sentenced to Federal prisons in 1972, the average sentence is for 43.3 months for whites and 58.7 months for nonwhites.[72]

Tagaki and others have discussed the disproportionate number of police killings of blacks,[73] and Julius Debro has described how prisons have been the foci of medical experimentation.[74] John Boone has given the following explanation of his experience in federal and state prisons:

> . . . underpaid guards who went about the job with the idea that a good prison is a quiet prison, and often they were willing to work for very low pay for the opportunity to "work niggers." As long as there are no escapes, no disturbances, nothing to draw unfavorable publicity, they do not care that the prisoners are drifting along on a low physical, mental and moral condition and that most of them will leave prison worse off than they entered.[75]

The problems within U.S. prisons should be reviewed along with the growing disparity in incarceration rates for blacks and whites. A recent study confirms the disproportionate imprisonment of blacks and reports that the problem has grown worse. Acknowledging an expansion trend in corrections since the early 1970s by citing the 907 federal, state and local prisons currently proposed or under construction, Scott Christianson reports that "not only has the prison system gotten bigger, but it also has gotten blacker."[76] Between 1973 and 1979, the black proportion of the state prison population increased from about 46.1 to 47.8 percent. Similarly, ". . . the black incarceration rate rose from about 368 to 544.1 per 100,000 during that period."[77] Table I-13 indicates that the disparity between black and white incarceration rates increased in every region of the United States between 1973 and 1979.

In 1973, the white incarceration rates ranged from

Table I-13

Jurisdictions Ranked by Change in Disparity Between Black and White Incarceration Rates, 1973-79

Rank	Jurisdiction	Disparity	Rank	Jurisdiction	Disparity
1	Idaho	850.4	27	Tennessee	146.7
2	South Dakota	657.6	28	North Carolina	120.2
3	Washington	611.2	29	Illinois	118.9
4	Delaware	598.4	30	Rhode Island	117.2
5	Nevada	569.0	31	New Hamphsire	106.9
6	District of Columbia	471.2	32	Missouri	94.6
7	Connecticut	469.0	33	Maryland	92.5
8	West Virginia	456.4	34	New Jersey	91.6
9	Vermont	429.7	35	Arkansas	89.8
10	New Mexico	424.1	36	Massachusetts	84.9
11	Oregon	401.9	37	Mississippi	83.2
12	Arizona	400.0	38	Alaska	74.5
13	Wisconsin	393.5	39	Georgia	58.2
14	Michigan	344.9	40	Wyoming	42.7
15	Iowa	311.0	41	Montana	33.6
16	Ohio	283.1	42	Oklahoma	32.8
17	Utah	263.8	43	Pennsylvania	27.5
18	Virginia	246.9	44	Nebraska	22.8
19	Hawaii	229.0	45	California	11.3
20	Texas	222.8	46	Kentucky	3.6
21	Maine	215.9	47	Minnesota	0.2
22	Louisiana	190.2	48	Colorado	-6.1
23	Florida	184.9	49	Alabama	-18.4
24	Kansas	155.7	50	Indiana	-19.7
25	South Carolina	155.2	51	North Dakota	-77.2
26	New York	148.9			

Source: Scott Christianson, "Our Black Prisons," Crime and Delinquency, Vol. 27, No. 3, (July 1981), p. 366.

> a low of 23.1 in the Northeast to a high of 66.6 in the South, while the black rates ranged from 340.3 in the Northeast to 452.5 in the West. Six years later the white rates had climbed to levels ranging from 36.7 in the Northeast to 100.5 in the South, but the black rates were up to 484.1 in the Northeast and 580.4 in the North Central states.[78]

As pointed out by Christianson, the fact that a large percentage of urban black males are imprisoned at one time or another in their lives can only have an extraordinary impact on the black community. (See Table I-14.)

The reasons for these gross disparities in black incarceration rates can be found in the prosecutorial and judicial processes. In February 1974, the National Association of Blacks in Criminal Justice passed a resolution establishing court monitoring as a high priority. Former Judge Harry T. Alexander emphasized the necessity of court monitoring and urged that the prosecutor's office be made accountable to the community. Alexander cited such judicial improprieties as permitting an accused person to appear before the jury in jail clothes, in handcuffs, in chains and shackles; the refusal to conduct a complete voir dire (pre-trail examination) of prospective jurors; allowance of improper and illegal testimony into evidence; and the permittance of disrespect of the accused person by the prosecutor, by his lawyer and by the judge. Alexander also expressed skepticism about the power of the prosecutor, citing prosecutorial abuses based on bias, discrimination, improper prosecutorial motives, discrimination and corruption. Alexander expressed particular concern about "overcharging" and "plea bargaining," as follows:

> What does overcharging do? The overcharging of the accused permits the government to extract a plea of guilty from the accused, who by the very fact of the padded indictment is intimidated and overwhelmed at the charges which carry many years of imprisonment upon conviction.[79]

Although the majority of the population may ignore these inequities within the criminal justice system, black Americans are keenly aware of how ineffective and destructive the system really is. Sadly,

> there is a reluctance on the part of Blacks to publicly speak out on the crime issue and to openly discuss the increasing fear of crime in the Black community because of the fear that the authorities will use such public announcement to further advance their "law and order" posture.[80]

Table I-14

Incarceration Rates Per 100,000 for Black Males, 1978

Rank	Location	Incarceration Rate	Rank	Location	Incarceration Rate
1	Washington	2408.6	27	Minnesota	1114.8
2	Arizona	2210.3	28	Massachusetts	1107.7
3	Alaska	2200.0	29	New York	1076.5
4	Iowa	1972.2	30	Georgia	1039.7
5	Nevada	1963.2	31	New Jersey	1006.3
6	Delaware	1961.1	32	South Dakota[a]	1006.0
7	Nebraska	1834.8	33	Missouri	1002.9
8	Utah	1775.0	34	Louisiana	975.0
9	Michigan	1734.7	35	South Carolina	954.5
10	Wisconsin	1734.2	36	Pennsylvania	879.2
11	New Mexico	1720.0	37	California	870.1
12	Florida	1577.0	38	Tennessee	845.7
13	Oregon	1520.0	39	Indiana	819.0
14	Maryland	1509.8	40	Illinois	810.3
15	Texas	1438.9	41	Maine	800.0
16	Ohio	1399.6	42	Arkansas	736.7
17	Connecticut	1378.6	43	Alabama	661.6
18	Oklahoma	1372.6	44	Kentucky	644.2
19	Idaho[a]	1301.7	45	New Hampshire	600.0
20	Rhode Island	1266.7	46	Montana	500.0
21	Maine	215.9	47	Minnesota	0.2
22	Virginia	1233.1	48	North Dakota	400.0
23	Colorado	1211.4	49	Hawaii	350.0
24	Kansas	1208.2	50	Vermont[a]	225.7
25	West Virginia	1200.0	51	Wyoming	0.0
26	District of Columbia	1118.0			

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[a] No estimates for the number of black males in the civilian population of these states were available for 1976. Therefore, these rates were computed from 1970 census figures. In all other cases, the source for general population statistics was Bureau of Census, "Demographic Social and Economic Profile of Stats: Spring 1976," Current Population Reports (Washington, D.C.: Government Printing Office, 1979), Series P-20, No. 334, pp. 10-18.

Source: Scott Christianson, "Our Black Prisons," Crime and Delinquency, Vol. 27, No. 3 (July 1981), p. 366.

The methods of implementing an offensive against crime under the slogan "law and order" have had so many negative results that "for black Americans this slogan connotes oppression, police occupation of black communities, inequitable and selective police treatment, disregard for human and constitutional rights of black citizens and continued denial of equal opportunity."[81]

Testimony before the Council showed that, in addition to their fear of crime, blacks have an even greater fear of the agents of the criminal justice system. Further, many expressed the belief that the criminal justice system is demonstrating only minimal effort to prevent the problem of black-on-black crime. As one witness explained:

> The black community feels that the criminal justice system could care less if blacks killed blacks. We feel that the reality in this situation is that the system looks at it as just another black killed, and that is one less black for the system to be concerned with. The black community cannot help but believe that black life to the system is worthless, so why worry about it.[82]

In short, many expressed the view that they saw four standards of justice in the United States. First, where whites commit crimes against whites, there is equal protection under the law; second, where blacks commit crimes against blacks, the courts and police are lenient; third, where whites commit crimes against blacks, whites are punished lightly, if at all, and the black complainant may expect reprisals; and fourth, where blacks commit crimes against whites, especially an offense against the person, retribution is swift and severe.

At a 1976 symposium of the nation's top-ranking black police executives, "the executives were unanimous in their belief that there is a great inconscistency in the way the law is enforced in black and white communities. Because of this inconsistency, there is a lack of trust among blacks of the police."[83]

Black judges described racism in the courts and in the law and problems of discrimination at a 1973 workshop on the administration of criminal justice and the black community. Judge George Crockett, Jr., now a U.S. Congressman, explained the effects of increased black representation on the bench in Detroit:

> As a result of this change in complexion you don't have nearly as much abuse of discretion by our judges in matters of arrest, bail and sentencing in

> Recorder's Court today as you had before 1966. You don't have nearly as much police brutality. You don't have nearly as much overcharging by prosecutors.[84]

The obvious underrepresentation of black personnel throughout the criminal justice system was the subject of concern and complaint by numerous witnesses before the Council. One witness stated:

> When we look at the supervisory personnel of the various police departments, this picture becomes even more serious. The percentage of nonwhite sergeants, lieutenants, and captains is significantly lower than the racial makeup of the whole department. Thus, because all law enforcement personnel are white, ghetto residents view the law itself as white.[85]

Witnesses maintained that the paucity of blacks in other parts of the criminal justice system was even more appalling; blacks are represented in substantial numbers only in the courthouse and prison janitorial service.

Data compiled by the EEOC demonstrate how blacks are concentrated in the lower-level jobs in both police and corrections departments.[86] Although EEOC does not provide employment data on courts, a report from the National Center for State Courts EEO project includes the findings that women and minorities are underrepresented among judicial and nonjudicial personnel in the state judiciaries.[87]

After a careful review of the current operations of the criminal justice system and the racial configuration of its personnel, the Council concluded that the system as a whole, as well as each of its component agencies, is in dire need of review in order to ensure greater fairness and to increase its efficiency and effectiveness. Concomitantly, the Council urges vastly increased participation of blacks in the operation of the criminal justice agencies in all its phases and at all levels. It is essential that more blacks occupy decisionmaking positions and that they are granted the necessary resources and support to perform their task.

D. Conclusion

This chapter has discussed the problem of crime in the black community and the perceptions black citizens have about crime and the criminal justice system. The problems of both are rooted in the racism and discrimination that have permeated all social, political, economic and legal institutions in this country throughout its history. Black Americans have been and continue to be limited in their "pursuit of happiness" in the United States. They have been the subject of oppressive laws and brutal law enforcement. They have been denied equal opportunities to more fully participate in the social and economic life in America. Their efforts to exercise their political rights have been met often with violence. Yet black Americans are expected to respect the laws that are used to oppress them. That their anger is expressed with greatest frequency against each other is a direct result of the pathology created by inhuman conditions and the history of racism and inequalities. They are forced to live in overcrowded and substandard housing in segregated ghettoes. Unemployed and underemployed, they are denied the human right to work and to support themselves and their families. Finally, they are subjected to a criminal justice system which associates blackness with criminality, whose agents abuse their power by using deadly force, whose adversarial legal system works to the disadvantage of the poor, whose predominantly white judiciary disparately sentences, and whose prisons are in reality human warehouses.

The causes of crime in the black community and the inequities of the criminal justice system have been described countless times by black leaders, social scientists and presidential commissions. Crime is a despicable symptom of a cancerous disease called racism, which manifests in unequal treatment of black Americans. For those who maintain that they have "never seen a root cause," the black ghettoes still exempify all the misery that one group can perpetrate on another.

The Council recommends that the government reverse its concentration on the criminal results of allowing breeding grounds of crime to flourish and focus instead on preventing crime by improving the quality of life for the inhabitants of black communities. This country has successfully proved that poverty, overcrowding and unemployment can precipitate crime waves. It is time now to demonstrate how crime, along with poverty, overcrowding and unemployment, can be reversed. This should not be the effort of patronizing white governmental missionaries, but rather blacks must participate in leadership positions in the reversal proposed by the Council. The War on Poverty, started in the Johnson administration, is the second major war which this country has lost, but, unlike Vietnam, its site remains within our boundaries and its effects continue to detract from the lives of all Americans.

In discussing the ethical choice before America regarding social justice, Dr. Martin Luther King, Jr., wrote:

> We are faced with the fact that tomorrow is today.
> We are confronted with the fierce urgency of now.

> In this unfolding conundrum of life and history there is such a thing as being too late. Procrastination is still the thief of time. Life often leaves us standing bare, naked, and dejected with a lost opportunity. The tide in the affairs of men does not remain at the flood; it ebbs. We may cry out desparately for time to pause in her passage, but time is deaf to every plea and rushes on. Over the bleached bones and jumbled residues of numerous civilizations are written the pathetic words: Too late. There is an invisible book of life that faithfully records our vigilance or neglect.[88]

This chapter then must be seen as a statement by the Council that, as citizens, blacks are due the protection of the U.S. Constitution and that the failure of the nation and its government to reduce crime and ensure an equal system of justice can only lead to the sad inevitability of "too late."

NOTES

1. National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, U.S. Department of Justice, Transcript of Interview with Judge Bruce Wright, November 9, 1978.

2. A. Leon Higginbotham, Jr., In the Matter of Color: Race and the American Legal Process, The Colonial Period (New York: Oxford University Press, 1978), p. 4.

3. John Hope Franklin, From Slavery to Freedom: A History of American Negroes (New York: Alfred A. Knopf, 1948). p. 71.

4. Higginbotham, In the Matter of Color, p. 19.

5. Franklin, From Slavery to Freedom, p. 186.

6. J. Thorstein Sellin, Slavery and the Penal System, (New York: Elsevier Scientific Publishing Co., Inc., 1976), p. 177.

7. Sellin, Slavery and the Penal System, p. 140.

8. John Hope Franklin, The Free Negro in North Carolina: 1790-1860 (New York: W.W. Norton and Company, Inc., 1971), p. 42.

9. Mary Frances Berry, Black Resistance, White Law: A History of Constitutional Racism in America (New York: Appleton-Century-Crofts, 1971), p. 9.

10. St. Clair Drake and Horace R. Cayton, Black Metropolis: A Study of Negro Life in a Northern City, Volume I (New York: Harcourt, Brace and World, Inc., 1962), p. 32.

11. Franklin, From Slavery to Freedom, pp. 231-232.

12. W.E.B. DuBois, The Philadelphia Negro (New York: Schocken Books, 1967), p. 26

13. Drake and Cayton, Black Metropolis, pp. 42-43.

14. Thomas F. Gossett, Race: The History of an Idea in America (New York: Schocken Books, 1965), pp. 261-262.

15. Derrick Bell, Race, Racism and America (Boston: Little Brown and Co., 1980).

16. Gossett, Race, pp. 256-257.

17. Sellin, Slavery and the Penal System, p. 146.

18. Gossett, Race, p. 258.

19. Franklin, From Slavery to Freedom, p. 328.

20. Gossett, Race, p. 267.

21. DuBois, The Philadelphia Negro, p. 39.

22. Drake and Cayton, Black Metropolis, p. 44.

23. Franklin, From Slavery to Freedom, pp. 429-430.

24. Gossett, pp. Race, 278-279.

25. National Advisory Commission on Civil Disorders (Kerner Commission), Report of the National Advisory Commission on Civil Disorders, (Washington, D.C.: Government Printing Office, 1968), p. 218.

26. Gossett, Race, p. 270.

27. Franklin, From Slavery to Freedom, pp. 278-279.

28. Joanne Grant, ed., Black Protest: History, Documents, and Analyses, 1619 to the Present (New York: Fawcett World Library, 1968), p. 178.

29. Gossett, pp. 453-454.

30. Charles Johnson, The Economic Status of Negroes (Nashville: Fisk University Press, 1933), p. 19 as paraphrased in Grant, Black Protest, p. 215.

31. Gunnar Myrdal, American Dilemma: The Negro Problem and Modern Democracy, (New York: Harper and Brothers Publishers, 1944), p. 380.

32. John Hope Franklin, From Slavery to Freedom, 5th ed., (New York: Alfred A. Knopf, 1980), p. 478.

33. Myrdal, American Dilemma, pp. 526-527.

34. Grant, Black Protest, p. 220.

35. Franklin, From Slavery to Freedom, 5th ed., pp. 459-460.

36. Franklin, From Slavery to Freedom, 5th ed., p. 473.

37. National Advisory Commission, Report, p. 110.

38. The President's Commission on Law Enforcement and Administration of Justice, Task Force on the Police, *The Police* (Washington, D.C.: Government Printing Office, 1967), p. 167.

39. National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Police, *Police* (Washington, D.C.: Government Printing Office, 1973), p. 332.

40. U.S. Equal Opportunity Commission, *Minorities and Women in State and Local Government, 1975* (Washington, D.C.: Government Printing Office, 1977), pp. 45-47.

41. Cynthia G. Sulton and Phillip Cooper, "Summary of Research on the Police Use of Deadly Force" in *A Community Concern: Police Use of Deadly Force*, Robert N. Brenner and Marjorie Kravitz, eds. (Washington, D.C.: Aspen Systems Corporation, 1979), pp. 69-94.

42. H. Jerome Miron and Robert Wasserman, *Prevention and Control of Urban Disorders: Issues for the 1980's* (Washington, D.C.: University Research Corporation, 1980), p. 64.

43. Kenneth R. Walker, "Rioters Felt Left Out by Government," *Washington Star*, June 5, 1980.

44. National Criminal Justice Information and Statistics Service, Law Enforcement Assistance Administration, U.S. Department of Justice, *Criminal Victimization Surveys in the Nation's Five Largest Cities: National Crime Panel Surveys of Chicago, Detroit, Los Angeles, New York and Philadelphia* (Washington, D.C.: Government Printing Office, April 1975), p. 23.

45. NCJISS, *Criminal Victimization*, p. 33

46. Lee P. Brown, "Causes of Crime," in *Black Crime: A Police View*, Herrington J. Bryce, ed. (Washington, D.C.: Joint Center for Political Studies, 1977), p. 42.

47. Brown, "Causes of Crime," p. 42.

48. Richard Velde, "Blacks and Criminal Justice" (address delivered before the Second Annual Conference on Blacks and the Criminal Justice System, February 5, 1975) as cited in Lee P. Brown, "Causes of Crime," p. 43.

49. Gwynne Peirson, "Racism as a Function of the Criminal Justice System," in *Social Research and the Black Community: Selected Issues and Priorities*, Lawrence E.

Gary, ed. (Washington, D.C.: Howard University Institute for Urban Affairs and Research, 1974), p. 100.

50. Gwynne Peirson, "Institutional Racism and Crime Clearance," in Black Perspectives on Crime and the Criminal Justice System, Robert L. Woodson, ed. (Boston: G.K. Hall and Co., 1977), pp. 110-111.

51. Ebony, Volume 34, No. 10, August 1979, p. 32.

52. Carrol Wiltz, "The Criminal Victimization of Minorities in the United States" (an unpublished paper prepared for the National Urban League Research Center), pp. 5-6.

53. Andrew F. Brimmer, "An Economic Agenda for Black Americans" (speech delivered at the Charter Day Convention Celebrating the One Hundred and Fifth Anniversary of Atlanta University, Atlanta, Georgia, October 1970) in Lee P. Brown, "Causes of Crime," pp. 44-47.

54. Ebony, p. 40.

55. DuBois, The Philadelphia Negro, p. 259.

56. DuBois, The Philadelphia Negro, pp. 285-286.

57. Stephan Thernstrom, The Other Bostonians (Cambridge: Harvard University Press, 1973), as cited in Charles E. Silberman, Criminal Violence, Criminal Justice (New York: Random House, 1978), pp. 127-129.

58. Earl R. Moses, "Negro and White Crime Rates," in The Sociology of Crime and Delinquency, 2nd ed., Marvin E. Wolfgang, et al., eds. (New York: John Wiley and Sons, Inc., 1970), p. 439.

59. Morris A. Forslund, "A Comparison of Negro and White Crime Rates," Journal of Criminal Law, Criminology and Police Science, Vol. 61, No. 2, June 1970, p. 217.

60. Robert DiGrazia, "Upgrading Police Leadership," Police Foundation Executive Forum on Upgrading Police, Washington, D.C., April 14, 1976.

61. Patrick V. Murphy, "Policeman Looks at His Job," Cincinnati Post, March 19, 1978.

62. William Raspberry, "When Criminals Have Something to Lose," The Washington Post, February 16, 1981, p. A-18.

63. Ibid.

64. U.S. Commission on Civil Rights, *Social Indicators of Equality for Minorities and Women* (Washington, D.C., August 1978), p. 17.

65. National Urban League Research Department, *Black Families in the 1974-75 Depression* (Washington, D.C.: National Urban League, July 1975), p. 1.

66. National Urban League, *Black Families*, p. 12.

67. Harvey Brenner, *Estimating the Social Costs of National Economic Policy: Implications for Mental and Physical Health and Criminal Aggression* (Washington, D.C.: Government Printing Office, 1976).

68. U.S. Commission on Civil Rights, *Social Indicators*, p. 64.

69. Guy B. Johnson, "The Negro and Crime," reprinted in *The Sociology of Crime and Delinquency*, 2nd ed., Marvin E. Wofgang, et al., eds. (New York: John Wiley and Sons, Inc., 1970), p. 429.

70. Ramsey Clark, *Crime in America* (New York: Simon and Schuster, 1970), p. 123.

71. Transcript of the National Minority Advisory Council on Criminal Justice, Mayor Maynard Jackson, June 10, 1978.

72. Lee P. Brown, "The Impact of Crime and the Criminal Justice System on the Black Community: An Overview" in *Social Research and the Black Community: Selected Issues and Priorities*, Lawrence E. Gary, ed. (Washington, D.C.: Howard University, 1974), p. 94.

73. Paul Tagaki, "A Garrison State in a 'Democratic' Society," *Crime and Social Justice*, Spring-Summer 1974, pp. 27-33.

74. Julius Debro, "Perspectives on Blacks in the Correctional Process," *Social Research and the Black Community*, p. 107.

75. John O. Boone, "Prison Construction Moratorium: Its Relationship to Crime Prevention, "Black Perspectives on Crime and the Criminal Justice System, Robert L. Woodson, ed. (Boston: G.K. Hall and Co., 1977), pp. 123-124.

76. Scott Christianson, "Our Black Prisons," *Crime and Delinquency*, Vol. 27, No. 3, July 1981, p. 365.

77. Christianson, "Our Black Prisons," p. 365.

78. Christianson, "Our Black Prisons," p. 365.

79. Harry T. Alexander, "Court Monitoring--A Necessity," in *Crime and Its Impact on the Black Community*, Lawrence E. Gary and Lee P. Brown, eds. (Washington, D.C.: Howard University, 1975), p. 171.

80. Brown, "The Impact of Crime," p. 89.

81. Robert Wintersmith, *Police and the Black Community* (Lexington, Mass.: Lexington Books, 1974), p. 2.

82. Transcripts, New York, N.Y., July 1977.

83. Herrington J. Bryce, "Introduction and Background," in *Black Crime: A Police View*, Herrington J. Bryce, ed. (Washington, D.C.: Joint Center for Political Studies, 1977), p. 14.

84. George W. Crockett, Jr., "Race and the Courts, in the *Administration of Criminal Justice*, p. 20.

85. Transcripts, Atlanta, Georgia, June 1977.

86. U.S. Equal Employment Opportunity Commission, *Minorities and Women in State and Local Government* (Washington, D.C.: U.S. Government Printing Office, 1975).

87. Francis L. Bremson, Mary W. Culhane, John Mayson, and August Milton, Jr., "Equal Employment Opportunity in the Courts," *State Court Journal*, Vol. 3, No. 3, Summer 1979, p. 14.

88. Martin Luther King, Jr., *Where Do We Go From Here: Chaos or Community?* (New York: Bantam Books, 1967), p. 223.

CHAPTER II

IMPACT OF CRIME AND CRIMINAL JUSTICE ON HISPANIC-AMERICANS

> Lack of representation of a cross-section of the Hispanic professional and client community on priority and policy making bodies continues to develop tunnel vision in addressing Hispanic community needs.[1]

A. Introduction

There has been a dramatic increase in crime in America during the last decade--an increase that is now significantly reflected in Hispanic-American communities and that provides the context within which this analysis of crime and criminal justice practices in selected Hispanic-American communities is offered. The National Minority Advisory Council on Criminal Justice was limited in its study of this subject by the dearth of social science research on issues affecting Hispanics. A review of the literature reveals several reasons for this neglect.

First, there are only a few studies of crime in Hispanic-American communities. Most studies on Hispanics have focused on employment, educational achievement, immigration or the impact of racism. To a limited degree, there have been studies of criminal behavior within some subgroups of Hispanic Americans, especially those of Puerto Rican origin. The understanding of crime among Hispanics, therefore, can only be gleaned inferentially from these studies. In addition, there is virtually no literature addressing crime among the more recent subgroups of Hispanics: Cubans, Dominicans and those from other Central and South American nations.

The few extant studies on Hispanic Americans and crime are not very informative. The major failing of these assessments is that they are hampered by the lack of national statistics on Hispanics and the various facets of the criminal justice system. Arrests, prosecutions, convictions and incarceration rates, particularly in metropolitan areas, are dominated by black representation. Hispanics are often "invisible," despite the fact that they are now the second largest minority in the United States. Still, if accounted for at all, they are usually in the category of "other" or "white."

As Sisson pointed out in his monograph on criminal justice and Hispanics,[2] the low statistical profile reflects that agencies both in and out of the criminal justice system use differing criteria for describing their populations, often prefering racial to ethnic categories. When, however, Hispanic ethnicity is used, inconsistent definitions, based on language, place of birth or parentage, often result in inaccurate statistics. The failure of many government agencies to achieve a uniform statistical definition of the composition of the Hispanic population and to present the data adequately hampers most research. Researchers, thus, often must begin by defining the population and the environment of their studies. The results have been that there is little comparability of data and methodologies for those studies.

Most of the studies that have been completed fall in two general categories: one category reflects the view that there is a unique Hispanic experience which can be understood as a result of initial differences between Hispanic and mainstream cultural assumptions, particularly those concepts of law, social control, communication patterns, and/or the result of breakdowns and transitional changes in Hispanic cultural values and supports. The other category holds the view that these cultural differences ought to be taken into account in the operations of the various criminal justice systems. A look at the implications of each set is necessary to appreciate the problems Hispanics face in the criminal justice system and to understand probable contexts for ameliorating those problems.[3]

When Hispanic culture is presented as a minority culture whose norms partially conflict with those of the larger culture, it is usually accepted that behavior which is "acceptable" in the Hispanic culture is considered "deviant" in the larger society. The assumption is often made that the behavioral patterns of a particular culture may not be appropriate or acceptable to the larger society and that individual members of the minority culture, ignorant of those norms of the wider society, can be expected to behave in a manner deviant to the norm. In addition, the member of the minority culture may find that he or she is automatically labeled "deviant" by virtue of the norms of his or her culture and that behavior that is "normal" to him or her is labeled as "criminal" by the larger culture. This is often the case of culture- specific activities such as gambling; religious practices such as spiritualist ceremonies; attitudes toward property, particularly communal property; and patterns of interpersonal communication.[4] All of these activities are frequently misinterpreted and misunderstood by those not familiar with Hispanic culture.

New immigrants, aware of the differences between their culture and those of the majority, often experience ambivalence and embarrassment when they first enter the established immigrant group whose culture they share. As a result, the attitudes and behavior patterns which distinguish earlier immigrant groups may be judged negatively not only by the majority society but also by the new immigrants themselves. The negative impact of such misrepresentations and stereotyping can be compounded and multiplied if the stereotyping can benefit the interests of the dominant group in the new society. Thus, the imported Hispanic culture is stereotyped as deviant, and, unfortunately, this label is perpetuated whenever a member of the group manifests any antisocial behavior such as the commission of a crime.

The issue of Hispanic culture in conflict with the mainstream culture is also evident in the legal system. The differences between the civil law, derived from Spanish colonial law, and the case law of the United States, derived from English common law are considerable. Spanish colonial law is based on the presupposition of the rationality of the human will. It is generally characterized by codification, the separation of public and private law which restricts equity in legal proceedings involving the state, and the historical acceptance of closed proceedings in which the judge plays the investigatory role. English common law, however, is rooted in the assumption that social control depends less on a state-imposed rationality than on the legal order which exists in nature. In common law traditions, the doctrine of precedent, the adversary system in criminal justice, the writ against illegal imprisonment (habeas corpus), and trial by jury provide a fundamental legal restriction on the power and the authority of the state and serve to provide a contrast with civil law.[5]

The two traditions present differing views of the place of power and authority within the society and different cultural responses to social control. Civil law of the Spanish colonies is based on codes; while common law is based on previously established legal principles.

For the Puerto Rican, an experience with the U.S. criminal justice system is further complicated by the legal history of his country and its influence on his culture. Puerto Rico was a colony of Spain, a civil law nation, until 1898. With the advent of American rule, the law of the State of California with its accommodation to Mexican civil law was adopted for the island in 1902. Inevitably, residual elements of civil law remained intimate to and a part of the Puerto Rican legal system. According to Sisson, a comprehensive exploration of the consequences of these cultural elements in Puerto Rico's legal system has never been made.[6] Moreover, the cultural dilemma which these historical conditions have created within the legal system and the expectations of the population regarding changes in that system have not yet been examined.

The second category of Hispanic studies argues that cultural considerations ought to play a part in the administration of criminal justice. However, these good intentions are seldom planned and implemented with any understanding of the various aspects of Hispanic cultures which should be considered. The consensus about the need for fair representation of Hispanic-Americans in the criminal justice system is seldom coupled with a knowledge of the role which Hispanic-Americans can and ought to play within the criminal justice system. Most often the practical need to overcome language barriers within parts of the criminal justice system diverts attention from issues such as allocation of authority to Hispanic-Americans within the criminal justice system, new arrangements for the successful treatment of Hispanic offenders and the probable roles of Hispanic law enforcement officers as a critical link between law enforcement agencies and Hispanic communities.

The courts increasingly are weighing the issue of culture in considering the admission of evidence, the determination of innocence or guilt and the criminal sentence to be rendered. The opinions of expert witnesses from the fields of psychology, sociology and other areas of social science are being accepted by jurists. However, social investigations and theories rest on sets of assumptions and values which may be restricted and/or limited to schools of thought, rather than on the evidence of the physical and natural sciences. Still, the recognition of new kinds of information by the courts is a subtle acknowledgment that, even when bound by the rational formula of common law procedure, judicial judgments are based on relative, rather than absolute, truth.

There are strong grounds for taking cultural factors into account in administering justice, but to do so requires a framework within which the relationship between the Hispanic communities and the criminal justice system may be understood. Gaps in knowledge by criminologists and practioners about the experience of the various Hispanic communities, absence of an accepted set of definitions for the Hispanic community, absence of a system for the collection of data about those communities by law enforcement agencies at all levels, absence of an understanding of the role which Hispanic officers should and might play within the criminal justice system, and absence of any knowledge about social science data relative to Hispanic culture are appropriate for admission as evidence in criminal justice proceedings. But it is appropriate these issues must be addressed individually and collectively before a cohesive framework from which the interrelationship of the criminal justice system and Hispanic communities may be understood.

This chapter presents an analysis of the impact of crime on Hispanic-American communities. It consists of four major sections. The first section is a historical overview of the Hispanic experience with particular focus on events that have affected the nature and extent of crime among Hispanic-Americans. The interrelationship of racial/ethnic antagonisms and economic conditions and the manner in which they influenced the everyday life situations of Hispanics are examined.

The second section deals with the problem of Hispanic crime, as presented in available official statistics. The statistics, however, should be viewed with caution, given the limitations that were noted previously. The seemingly low arrest rates and prison commitments of Hispanics, when compared with those of blacks, are not accurate indicators of crime in Hispanic communities, but they may well reflect the confluence of defects in the definitional/reporting system of criminal activity and the attitudes of Hispanics toward the role of law enforcement in their everyday lives.

The third section provides a more comprehensive analysis of crime in Hispanic communities and examines the impact of crime in selected communities: Puerto Rican, Cuban, and Mexican. The analysis is based on testimonies by citizens before the NMACCJ public hearings, in-depth interviews with valid sources, including local officials and community people, as well as information from newspapers and local police records.

The fourth section discusses the conflicts between Hispanic communities and enforcement agencies. This section delineates the use of deadly force by law enforcement agencies against individual Hispanics, the apparent disregard of the civil liberties of citizens in Hispanic communities by local law enforcement agencies and the seeming unwillingness of local and state governments to address the conflicts between Hispanic communities and law enforcement agencies. This issue is important in that it calls into question the very issues raised earlier about perceptions by Hispanics and the larger community of Hispanic culture, the operation of Hispanic culture and the probable behavior of individual members of Hispanic culture as they interact with the larger society.

B. The Hispanic Experience in the United States

This section is a historical overview of the major Hispanic communities in the United States. The purpose of this section is to highlight the relationship between racism and crime. Since there already exists literature that provides a more comprehensive account of Hispanic history, the following discussion is limited to events of the Mexican, Puerto Rican and Cuban experiences in the United States. It also analyzes the forces behind these key events and interprets their significance with respect to crime and criminal justice. This interpretation is intended to provide a perspective within which one may understand crime and its related impact on present-day Hispanic communities.

An understanding of terms, however, is necessary initially. The term Hispanic is a relatively new one.[7] It has been used increasingly in the media and in general discussion as an easy way to refer collectively to a growing number of Spanish-origin or Spanish-speaking people in the United States. At one time it most often designated Mexican-Americans in the Southwest and Puerto Ricans in the East. Later, it was applied across the country to people whose connection to Spain or to a former Spanish possession was distant or recent. In local and national politics it helped forge a common sense of purpose and unity among groups that differ widely among themselves. The term Hispanos properly refers to the fourth- and fifth-generation descendants of the colonial Spanish largely concentrated in New Mexico and Texas.

As now used, the term Hispanic combines the following ethnic groupings:

- All persons of Mexican descendant, whether recent arrival or long-term resident and citizen;
- All Puerto Ricans, mainland or island; and
- All immigrants from Central and South American countries.[8]

Though referred to as Hispanic, the group represents a variety of ethnic groupings who speak languages other than Spanish. Some, as in the case of Brazilians, speak Portuguese; others, as in the case of those from French Guiana, speak French; and others, as in the case of those from Surinam, speak Dutch.

One cannot reasonably talk about crime and criminal justice and their impact on Hispanics without separately discussing the experiences of each ethnic group. Such a task is quite complex and beyond the scope of this chapter. Thus, the abbreviated histories presented in this analysis are of the largest subgroups within the population called Hispanics.

1. Mexicans in America[9]

The first large group of Mexican Americans, some 80,000, came to the United States as victims of conquest and annexation following the acquisition of territory in the Southwest and the U.S.-Mexican War. Between 1845 and 1854, the United States acquired about half the territory formerly belonging to the Republic of Mexico, including all or part of the present states of Arizona, California, Colorado, Nevada, New Mexico, Texas, Utah and Wyoming. During these early years, the Mexican-American population of this area grew slowly until the beginning of the twentieth century, when immigration from Mexico soared. With one of the highest birthrates in the nation, the group grew rapidly from natural increase as well. In the 1960s, for example, the Mexican- American populatation of the United States rose by 32 percent, two and a half times the rate of the U.S. population.

Perhaps the most perplexing and misunderstood general characteristic of Mexican-Americans is that of race. In the United States people tend to be placed in simplistic racial categories without allowances for racially mixed groups or individuals. Chicanos, as Mexican-Americans are more popularly called, are not a race, but a multiracial group principally of Spanish and Indian, and to a small degree, African heritage. The solution adopted by the Census Bureau in 1970, making Mexican-Americans a subcategory of Caucasians, is a distortion of the heavy Indian ancestry. However, placing them in the Indian category would also be incorrect, as most have some Spanish ancestry and a few are of purely Spanish-American extraction. A brief review of history reveals the multiracial characteristics of this subgroup.

Before the seventeenth century the American Southwest was dominated by American Indian groups, each with its own culture and society. Throughout the sixteenth century, periodic expeditions from central New Spain (from which the nation of Mexico later emerged) penetrated the area and developed knowledge of its geography and inhabitants. At the end of the sixteenth century, the region that is now New Mexico became the first target for colonization, followed by the areas that are now Arizona, Texas and California.

In general, the colonies developed in relative isolation. It was not until the Old Spanish Trail between Santa Fe and Los Angeles was established in 1829, eight years after Mexico had won its war with Spain, that communications among them became regular and frequent. The region's economy was based on agriculture and livestock. In contrast to central New Spain, the colonists found little mineral wealth and few agricultural Indians for cheap labor. Most of the colonists became farmers or ranchers and worked either their own land or that of other colonists.

From 1821 to 1846, northern Mexico experienced a major change: the coming of the Anglo-Americans. Anglo trappers used New Mexico as a base and Anglo merchants settled in Santa Fe and Taos. California also attracted trappers and traders, who often remained there to live. In both New Mexico and California, many of these settlers eventually married Mexican women, became Mexican citizens and obtained land grants from the Mexican government. In contrast, the overland pioneers who settled in the Sacramento Valley of northern California brought their families, stayed to themselves, and resisted integration into Mexican society. It was this group that ultimately rebelled in 1846 against their Mexican hosts and formed the short-lived secessionist "Bear Flag Republic" in California.

Texas was different; Anglo-Americans remained a minority in New Mexico and California but not in Texas. They flooded into east and south Texas and, by 1835, outnumbered the Mexicans by six to one. The earliest of these Anglo settlers was given a land grant by the government of New Spain in 1821. In obtaining land grants, Anglo immigrants agreed to become Mexican citizens, obey Mexican laws, accept the official Catholic faith, learn Spanish, and take steps to become fully assimilated into Mexican society. However, over the years, it became apparent that the settlers did not want to become integrated into Mexican society. The Mexican government countered with a series of restrictions that reflected the desire for increased centralization of authority. The strains and disagreements led to the Texas Revolution of 1835. The outcome was that the Anglos won and formed the Lone Star Republic. The republic joined the nation as the state of Texas in 1845.

Shortly after the annexation of Texas, there was the U.S.-Mexican War of 1846-1848. Tensions between the two countries had developed because of U.S. expansion on the Pacific Coast. After a series of battles fought throughout most of northern and central Mexican territory, and after American troops had captured Mexico City, the capital, the Treaty of Guadalupe-Hidalgo was drafted. The treaty recognized U.S. possession of northern Mexico, which included about one-third of Mexico's territory, not including Texas. In return, the United States agreed to pay Mexico $15 million and to assume up to $3.25 million in claims by U.S. citizens against the Mexican government.

The treaty did not solve all boundary problems, for the United States realized that the Mesilla Valley, now in southern Arizona and New Mexico, was needed for the southern route of the U.S. transcontinental railroad. Financially pressured, the Mexican government sold this 30,000 mile strip to the United States for $10 million, as ratified in the Gadsden Treaty of 1854.

The 2,000 mile U.S.-Mexican boundary had played a major role in Mexican-American history. Mexican immigration into the United States during the second half of the nineteenth century was on a modest scale, compared to developments in the twentieth century. However, the California gold rush attracted many Mexicans to California, primarily from the state of Sonora. After working the gold mines, the miners often remained in the United States instead of returning to Mexico. Tucson, Arizona, became a magnet for Mexican workers. The growth in the cattle, sheep, cotton and vegetable industries in Texas during the last part of the nineteenth century attracted Mexicans from the border state of Coahuila and also from many of the distant ones. The 1890 Census counted more than 75,000 Mexican-born immigrants in the United States, a figure which did not include either those born in the annexed areas before the conquest or those born in the United States.

Social and economic changes in both countries were critical to the migration of Mexicans during the twentieth century. The development of mining and industry in northern Mexico, as well as the north-south railroad lines, attracted large numbers of Mexicans to the north. The new industrial, mining and railroad skills they learned were useful when many later migrated to the industrial areas of the United States, and the railroad provided quick and easy transportation for the Mexicans to various parts of the United States.

The responses of Americans to Mexican immigration varied. Most people, particularly outside of the southwest, were not aware or concerned about this phenomenon. Social service organizations, charitable institutions, Catholic and Protestant churches and some government agencies attempted to ease the immigrants' difficult transition. Members of the country's industry and agriculture communities generally supported open immigration from Mexico because it increased the labor pool. However, opposition to Mexican immigration grew throughout the 1920s, particularly from groups such as city chambers of commerce, local welfare agencies, nativist organizations and labor unions. Such opposition ultimately became a part of the national debate over immigration policy. The establishment of the Border Patrol under the U.S. Bureau of Immigration in 1924 was a response to this debate.

The end of the Depression and the coming of World War II reversed the migration flow again. Wartime expansion of the U.S. armed forces and war industries created a labor shortage, and Mexican workers were again welcomed. These conditions not only generated a growth of immigration but also helped to create Bracero Program. Initiated in 1942 by a U.S.-Mexican executive agreement, the program provided for Mexican braceros (laborers) to enter the United States as short-term contract workers, primarily in agriculture and transportation. Before the program ended in 1947, an estimated 200,000 braceros worked in 21 states, about half of them in California. The program was reenacted by Congress in 1951, largely because of agricultural shortages created by the Korean War, and continued until 1964, peaking in 1959 when nearly 450,000 braceros entered the United States. In 1960, they formed 26 percent of the nation's seasonal agricultural labor force. Even after the termination of the program, Mexican workers could enter the United States by such mechanisms as the "green cards" that permit temporary employment.

World War II brought increased tensions between Mexicans and law enforcement agencies. Two events in Los Angeles brought this issue into focus. In the Sleepy Lagoon case of 1942-1943, 17 Mexican-American youths were convicted of charges ranging from assault to first-degree murder for the death of a Mexican-American boy discovered on the outskirts of the city. Throughout the trial, the judge openly displayed bias against the accused youths and allowed the prosecution to bring in racial factors. Further, the defendants were not permitted haircuts or changes of clothing. In 1944, the Sleepy Lagoon Defense Committee obtained a reversal of the convictions from the California District Court of Appeals, but the damage had been done. Los Angeles newspapers sensationalized the case and helped to create an anti-Mexican atmosphere, police harassed Mexican-American youth clubs and repeatedly rounded up Mexican-American youth "under suspicion."

In addition, at this time tensions and conflicts arose between U.S. servicemen in the area and young Mexican-American youths, many of whom were dressed in "zoot suits," which were popular at the time. Soldiers and sailors attacked the youths on the streets, even dragging them out of theaters and public vehicles. Instead of intervening and stopping the attackers, local police moved in and arrested the Mexican-American victims. Spurred on by the sensational anti-Mexican press coverage on the "zoot suit riots," these assaults spread throughout southern California and even into midwestern cities. A citizens' investigating committee appointed by the governor of California reported that racial prejudice, discriminatory police practices and inflammatory press coverage were the principal causes of the riots.

As was the case for most groups of Americans, Mexican-Americans experienced many favorable socioeconomic changes during the post-World War II period. Despite racial and other tensions, individuals within the various minority groups benefited from legislation such as the G.I. Bill. And, through such legislation, many individuals within the Mexican-American communities benefited and achieved higher socioeconomic status. However, such gains did not bring full equality for Mexicans. According to the 1970 census, the percentages of Mexican-Americans in professional, technical and clerical positions have increased, yet Mexican-Americans still fall far short of parity with their numbers in the general population. Moreover, within nearly every major occupational group, Mexican-Americans hold inferior jobs as compared to whites, and their earnings within the same job classifications are lower than those of Anglos. The 1970 census indicated that the percentage of Mexican-Americans in professional and technical positions was less than half that of the total population. People with Spanish surnames composed 0.9 percent of the lawyers and judges, 1.1 percent of the dentists, and 3.7 percent of the physicians in the United States. Mexican-Americans owned less than 1.0 percent of all businesses with gross profits of less than 0.2 percent of the national figure.

Mexican-Americans, however, are overrepresented in unskilled and farm labor. In 1970, Mexican-American men worked in farm labor at more than three and a half times the rate of the general U.S. male population, and Mexican-American women held such jobs at nearly five times the rate of women in the overall work force. Income figures also reflect this disparity. The income of Spanish-surnamed persons in the Southwest as compared to Anglo-Americans rose from slightly more than 57 percent in 1949 to almost 62 percent in 1959. From 1959 to 1969 the median income of families with Spanish surnames in the Southwest as compared to the median for Anglo-American families barely inched from 62 percent to 66 percent. Moreover, while Spanish surname families made gains in this period in four southwestern states, including a jump from 57 to 67 percent in New Mexico, in California they dropped from 73 to 70 percent of the Anglo family income.

The unemployment rate for Mexican-Americans has remained consistently greater than that of Anglos. Mexican-American women who are heads of households are at an even greater disadvantage than are women of other races; in 1974, their family income averaged only $4,390, whereas female-headed families nationally had an average income of $6,415. Nearly half of all families headed by Mexican-American women fell below the poverty line.

The unequal economic conditions are also reflected in educational statistics. Before 1920, only 9 percent of Mexican-American men graduated from high school. By the mid-

1960s, the figure was 38 percent for the Mexican born and 56 percent for second-generation Mexican-Americans. Still, in 1970 Mexican-Americans over 25 years of age averaged less than 9 years of schooling, compared to more than 12 years for Anglo Americans. The U.S. Commission on Civil Rights reported in 1971 that in the five southwestern states 86 percent of Anglos, 67 percent of blacks but only 60 percent of Mexican-Americans had completed high school. This gap widened at the postsecondary level, with 24 percent of the Anglos, 8 percent of the blacks, and 5 percent of the Mexican-Americans graduating from college. Hispanic-Americans received 254 doctorates in 1973-1974, only 1.1 percent of the national total. In the year 1976-1977, Mexican-Americans made up only 1.5 percent of the first-year students in U.S. medical, dental and American Bar Association-approved law schools.

Historically, Mexican-Americans have encountered educational segregation and deprivation. A six-volume study of Mexican-Americans in education published in the early 1970s by the U.S. Commission on Civil Rights showed that Mexican-American schools tended to have lower expenditures per student than Anglo schools and were physically inferior, less well-supplied and less favorably staffed. Mexican-American children have been excessively and incorrectly assigned to classes for the mentally retarded, and they have traditionally been tracked into vocational rather than college preparatory programs.

How do these factors relate to crime and the criminal justice system in the Mexican-American experience? As has been shown, the criminal justice system and the laws on which it is based have been used in a systematic way to deprive Mexican-Americans of their rights. Beginning with the early expansionist period in U.S. history, Mexicans and later Mexican-Americans found themselves required to fight for their rights, despite Anglo pronouncements that the foundation of the American legal system was based on equality for all. In addition, despite major contributions to the development of economic growth of the United States, especially in the Southwest, Texas and California, Mexican-Americans have been denied educational and economic opportunity in the larger spheres of American life.

Consistently, commissions and other study groups have found that Mexican-Americans have been victimized by law enforcement agencies. Stereotyped as different, as in the zoot suit cases of the World War II era, these stereotypes are still perpetuated, and Mexican-Americans still find themselves victims of law enforcement agencies. The 1970 report of the U.S. Commission on Civil Rights on Mexican-Americans and the Administration of Justice in the Southwest documented unequal treatment by law enforcement agencies and the judicial system. Among the widespread abuses cited in the Commission's report and other studies are the lack of bilingual translators in court proceedings; underrepresentation of Mexican-Americans on grand juries, as judges and as law enforcement officers; unequal assignment of punishments and probations to convicted Mexican-Americans; excessive patrolling of Mexican-American communities; anti-Mexican prejudice among police and judicial officials; and wrongful use of law-enforcement agencies in the search for undocumented aliens.

2. Puerto Ricans in America[10]

According to the 1970 census, Puerto Ricans living in the continental United States represented one-third (1,491,463) of the total Puerto Rican population; the remaining 2,712,033 lived in the Commonwealth of Puerto Rico. Slightly over half (54.8 percent) of those in the United States live in New York City, which has the largest Puerto Rican population of any city in the world (817,712), compared with 463,242 in San Juan, Puerto Rico's capital and largest city. Chicago has the second largest U.S. community with 78,856. Smaller settlements can be found in Philadelphia and Newark (about 26,000 each) and in other cities in New Jersey, California, Connecticut, Massachusetts and Ohio.

Puerto Ricans have been U.S. citizens since 1917 and, therefore, can travel freely between the island and the mainland. But because the island's language and culture are foreign to most of the mainland Puerto Ricans, immigration involves a cultural transition very much akin to that of immigrants from Europe or Asia. Puerto Ricans have not gone in large numbers to the Southwest, where an old and large Spanish-speaking population is already established; their problems are those of urban-based immigrant minorities. On national issues, they find themselves a minority among Spanish-speaking Americans. Mexican-Americans dominate in numbers and in influence.

Puerto Rico is a Caribbean island 100 miles long and 35 miles wide, situated about 1,000 miles southeast of Florida. Discovered and claimed for Spain by Columbus in 1493, it remained a Spanish colony and was mainly a military outpost until 1898. When discovered, the island was inhabited by Indians called the Tainos, most of whom died out after the Spanish conquest. The predominant elements of Puerto Rican culture, however, remain those of the Spanish colonizers. Little of the Taino culture survived, although Indian physical features can still be seen on the faces of some of the inhabitants. African influence has been more substantial. Intermarriage and sexual union have resulted in a varied population ranging in color from completely Caucasoid to completely Negroid, with many variations in between. However, the language is Spanish, the common religion Roman Catholic, and the cultural patterns and social relations are Spanish colonial.

After the Spanish-American War, Puerto Rico was given to the United States by the terms of the Treaty of Paris (1898). There followed a brief period of military occupation, and in 1900 the United States granted its island possession a measure of local government under the Foraker Act. This arrangement lasted until 1917 when the Jones Act, passed in reaction to pressures for independence and widely resented by Puerto Ricans, unilaterally declared Puerto Ricans to be citizens of the United States unless they explicitly refused it. In 1946, the United States appointed Puerto Rico's first native-born governor; in 1947, the Elective Governors Act authorized the popular election of a governor; and in 1948, Luis Munoz Marin, founder of the Partido Democratico Popular (Popular Democratic Party), was elected the first governor of Puerto Rico.

In 1950, the U.S. Congress passed the Puerto Rican Federal Regulations Act enabling Puerto Ricans to draft their own constitution, so long as its provisions did not exceed the limitations placed on an incorporated territory of the United States. The consitution could not provide for independence or statehood. The constitution, which was drawn up and approved by the Congress and accepted by a Puerto Rican referendum, designates Puerto Rico as a "free associated state" or "commonwealth." It remains subject to most U.S. laws, including federal conscription. Its citizens cannot vote in U.S. elections and have no representation, aside from an elected resident commissioner who sits with the Congress but has no vote. As a result, however, they also pay no federal taxes.

It should be mentioned, however, that the varying political parties in Puerto Rico have been formed along lines related to their position regarding the desired status of Puerto Rico. In 1953, the General Assembly of the United Nations categorized Puerto Rico as a possession that had already been given the right of self-determination through its commonwealth constitution and should therefore not be identified as a non-self-governing territory. The island's independence parties continued to challage this decision. In the fall of 1977, the three major political parties came before the U. S. Committee on Decolonization to protest its limited autonomy. The issue of the future political status of Puerto Rico still continues to be an explosive one on the island.

The first Puerto Ricans came to the United States in the nineteenth century as political exiles, seeking a base in New York from which to work for independence for the island. The first, mostly political immigrants, returned home after the island had become a U.S. possession. There they assumed the leadership of the various political movements that marked the island's history. However, they were soon replaced in the United States by other mostly poor islanders who came looking for work. Between 1898 and 1940, the number of Puerto Ricans who came to New York seeking employment already constituted a major portion of the city's population, more than 61,000 people. From them, others soon learned of economic opportunity on the mainland, and many came knowing that they could count on the hospitality of the earlier arrivals.

After World War II, a massive migration from the island to the mainland occurred. Most of those who came were young, unemployed or underemployed workers seeking economic opportunity. Contract farmworkers constituted the first post-World War II wave of immigrants. Beginning in the mid-1940s an average of 20,000 contract farmworkers came to the mainland every year. Some of them stayed, moved to whatever city was closest to where they could work, and became permanent residents. The numbers have decreased only in recent years.

With the development of cheap air travel in the late 1940s, it became possible to fly from the island to New York City in six hours for less than $50. The scale of migration and travel increased dramatically, by 1973 close to 5 million people a year were making the journey back and forth from the mainland. While some were tourists or people on private or government business, the great majority were coming or going to visit family or were in search of jobs.

By far the largest Puerto Rican settlement on the mainland is New York City and its environs. New York is where Puerto Ricans first settled, and it continues to be the most important and influential of Puerto Rican settlements on the mainland. The Puerto Ricans first came to Brooklyn and settled in the area around the Navy Yard during and after World War I. By 1930 East Harlem had become a larger Puerto Rican community and had acquired the name El Barrio (the neighborhood). It is still the area most clearly associated with Puerto Ricans in New York City.

The Puerto Rican population is very young: 48 percent was below 20 years of age in the 1970 census. In the 1974-1975 school year, 253,000 Puerto Rican children were enrolled in the public schools of New York City or 23 percent of the total school enrollment. As these children reach marriageable age and begin to raise families, the rapid increase in their numbers will probably make them one of the largest ethnic groups in the city, assuming that the majority of them remain in the city.

In New York City, as elsewhere, Puerto Ricans face problems common to most immigrant newcomers: poor housing, menial jobs, economic exploitation, unemployment, poor health, and handicaps of language and limited education. They came to New York just as the unskilled jobs by which newcomers once sustained themselves were disappearing from the marketplace. New York City lost 500,000 jobs between 1970 and 1976, and large areas of the city have fallen into a state of deterioration and decay, while neighborhoods, such as the South Bronx, have been almost totally burned down, making stable residency impossible for many of its residents.

Two major problems faced by members of Puerto Rican communities are poverty and lack of education. Puerto Ricans as a group are the poorest citizens in New York City. Their median family income in 1970 was $5,575, lower than the $7,150 black median and little more than half the citywide median of $9,682. One-third of Puerto Ricans live below the poverty level. Thirty percent were receiving public assistance in New York in 1970, somewhat higher than the 25 percent receiving public assistance nationwide. Since the mid-sixties their relative income position has deteriorated; family earning increased by 13 percent between 1959 and 1969, but the increase for New York families generally was 26 percent. They are also the poorest of Hispanic groups in the United States, with a median family income in 1974 more than $1,800 below that of Mexican-Americans. Still, the situation is better than it would be if they were on the island of Puerto Rico, where the median income for families in 1970 was $3,063, or $2,500 lower than on the mainland.

Several reasons have been suggested for the persistence of poverty among Puerto Ricans. Puerto Ricans came to the mainland without the skills necessary for white collar jobs; many did not know English; their schooling did not prepare them for the technical nature of the labor market; they migrated to large metropolitan eastern cities where job opportunities for unskilled labor were declining; and many are also victims of racial discrimination. Unemployment is consequently higher than it is among other groups. Only 48 percent of Puerto Ricans 16 years of age and older were in the labor force in New York City in 1970, compared to 57 percent for the total population, partly because fewer Puerto Rican women over 16 years of age were in the labor force, in contrast to 40 percent of women in the total population. Puerto Rican women have more children, and earlier, than the population as a whole. In addition, many become discouraged at not finding work and eventually simply drop out of the labor force. The large proportion of women (28 percent) who are the head of families, many of which include small children,

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rely on public welfare for a subsistence income. If they are employed, it is likely to be in a poorly paid, menial job. Family income lags even if the wife does work. In New York City, a Puerto Rican couple's combined median income is comparable to that of an average non-Puerto Rican, New York family with only one wage earner.

Second-generation Puerto Ricans are doing better than their parents. The 1970 Census reports 7 percent of second-generation men in professional and technical positions in contrast to only 3 percent of the first generation; 30 percent of the second-generation men are in clerical and sales as opposed to 17 percent in the first; for women in clerical and sales employment, the advance is from 32 percent in the first to 66 percent in the second.

Even at the highest occupational levels, Puerto Ricans are at a disadvantage. Those in professional and technical positions in the New York area in 1970 had median annual incomes $800 lower than blacks in similar positions and $4,500 lower than the average for the total population primarily because they are recent arrivals and do not have many high earners at those occupational levels.

Puerto Ricans also have a much lower educational level than the American average. According to the 1970 census, they had completed a median of 8.6 years of schooling by age 25, compared with the norm of 12.1 years. Few ever finish college--2 percent, compared with 10 percent for the nation. They also have one of the highest dropout rates of any group in the United States. In 1970, 18 percent of Puerto Rican males 18 to 24 years of age were still enrolled in school compared with 38 percent in the total population. The proportion of Puerto Rican college freshmen in the United States dropped from 0.6 percent in 1971 to 0.1 percent in 1973.

The islanders came from a culture where color has little meaning to one where it means a great deal, and in New York City they live with the largest number of blacks in any U.S. city. The U.S. census continues to sort Puerto Ricans in the United States into categories of white and Negro. Puerto Ricans have numerous terms designating gradations in color, and the general term "Negro" is rarely used (*Negra* and *Negrita* are terms of endearment for anyone of color). The term *de color* (a colored person) is the most common. *Moreno* in Spanish-language newspapers usually describes an American black as opposed to a colored Puerto Rican. The most common term for people of in-between color is *trigueno*, *Indio* if the person has Indian features. *Grifo* refers to people with kinky hair, but light skins; *pelo malo* (bad hair) is more or less equivalent. Discrimination among Puerto Ricans centers more on class than color. Among the poor especially there is an ease of social interaction between classes very different from the black experience in the United States. Prejudice exists in Puerto Rico, but it is not as overt and pervasive as it is on the mainland.

When Puerto Ricans come to the United States, the shock of discrimination is a major source of tension, and one for which they are not prepared. The intermediate designation of trigueno disappears; people are identified either as "white" or "black." They quickly learn that being white makes things easier. In studies of Puerto Ricans, as well as in their own writings, color is repeatedly mentioned as one of the most serious problems of adjustment they have to face. Some expect that Puerto Ricans will evenually split into two groups: those who can win acceptance as white will assimilate into the white community; those who are identified as black will join the black community. As yet, this has not happened.

Puerto Ricans, however, make a sharp distinction between Puerto Ricans who are de color and American blacks. Tension exists between the Puerto Rican and black communities. This antagonism centers largely on issues of politics and community control over institutions and access to public funds, and it is reflected in the persistent street violence between the two groups that is common where they live.

Many Puerto Ricans arrived on the mainland when the black Civil Rights Movement and, later, the black power movement were in the forefront. This created problems for Puerto Ricans, for they were faced simultaneously with the fact of racial prejudice and the ambiguities it created for them as a racially mixed group.

How does this experience affect the Puerto Rican experience with the criminal justice system? As stated previously, the Puerto Rican experience has been filled with a set of negative circumstances. Like most of the immigrants who came to the United States, they came looking for economic advancement. However, several factors converged to depress their aspirations for a better life. The major waves of immigration came at a time when the economic character of the older cities on the eastern seaboard to which they were drawn was changing dramatically. Their youth and low levels of education combined to negate their participation in the better jobs which were available. Their difficulty with English also inhibited their fuller participation in the economic life of the cities in which they settled. Any one of these factors is sufficient to depress sustantially any gains in the economic arena; combined, they have acted absolutely to restrict and restrain the socioeconomic level of Puerto Ricans far below that of other Hispanic subgroups.

What has emerged is a group of people fighting overwhelming odds. Out of poverty and frustration, the young, unskilled and poorly educated Puerto Rican males have sought alternatives for economic survival. For many, this has meant a life of criminal activity; usually one involving drug traffic. Recent studies of the Puerto Rican experience with the criminal justice system have drawn this profile as typical of the Puerto Rican offender, and, as these studies have also indicated, their participation in the criminal justice system is growing at levels disproportionate to their numbers in the population as a whole. The specifics of the criminal activity and experience with the criminal justice system are addressed in the last two sections of this chapter.

3. The Cuban Experience in the United States[11]

Cubans, for the most part, have come to the United States relatively recently; only in the 1970s did they begin to have a visible cultural and economic impact on the cities where they settled in large numbers. The number of persons of Cuban origin or descent residing in the United States in 1977 was estimated at 681,000 by the U.S. Bureau of the Census. Less than 20 years earlier, there were not more than 50,000 Cubans in the United States, less than 8 percent of the 1977 estimate.

Although most of the Cuban immigrants have lived in the United States for less than 20 years, Cuban immigration has a long history. As early as 1831, Cubans were living in Key West, Florida, where a small Cuban-owned cigar factory employed 16 craftsmen. Later, during the decline of Spanish colonial rule of Cuba, some Cubans looked to the United States as a place of refuge. There was substantial migration just before, during and after the Cuban struggle for independence from Spain in the late nineteenth and early twentieth centuries. Many of the immigrants were also cigar makers. From 1868 to 1878, the immigration of tobacco workers increased as the anti-Spanish struggles devastated tobacco plantations, especially in the eastern part of the island.

From the beginning of the twentieth century until the Cuban Revolution of 1959, immigration fluctuated according to the changing political and economic conditions on the island. In the late 1950s, during the last years under dictator Fugencio Batista, Cubans migrated to the United States at an estimated rate of 10,000 to 15,000 annually. Those who immigrated prior to the revolution of 1959 were a heterogeneous group, including members of the ruling elite who were out of favor at the time, other politically or socially alienated persons, and unemployed persons seeking employment.

Immediately after the overthrow of Batista's government by the rebel forces led by Fidel Castro, some people who were closely associated with the Batista government fled to the United States. The immigration did not really start in earnest until 1960, when the new Cuban government made it clear that Cuban society was to be restructured. More than 155,000 Cubans immigrated to the United States between 1959 and 1962. This was facilitated in great part by U.S. hostility toward the rebel government. The U.S. government granted Cubans refugee status, which allowed an unlimited number to enter the nation despite the Cuban immigration quota. Some entered the country with immigrant visas granted by U.S. embassies in a third country or in Cuba prior to severed relations with the United States. Most entered with temporary visas and had parolee status until 1966, when a procedure was established by which they could become permanent residents.

The suspension of direct flights from Cuba to the United States lasted more than three years. During that time, immigration slowed considerably. Nonetheless, 30,000 Cubans arrived in the United States during that period. The immigration rate increased, again, however, after President Johnson's administration signed a "memorandum of understanding" with the Cuban government in December 1965, which established an airlift between Varadero and Miami. These daily flights brought some 257,000 Cubans to the United States between December 1, 1965, and December 31, 1972. The airlift ended in 1973.

More recently, as a result of agreements between the Carter administration and the Castro government, Cuban refugees have been allowed into the country. Inadequate preparation for the large number of those wishing to come to the United States and the need to provide temporary shelters in abandoned military bases throughout the Southeast have resulted in conflicting estimates of the number of Cuban refugees who have remained in the United States. Some, unable to find sponsors in the United States, have expressed the desire to return to Cuba.

Cubans arriving after the 1959 revolution have been labeled exiles or political refugees, because their immigration was in response to the changes in political life on the island. The socioeconomic characteristics of such exiles are very different from those who came seeking better employment. The latter are usually drawn disproportionately from the less-advantaged and less-skilled segments of the society, while exiles are almost always members of somewhat more privileged classes.

In Cuba, between 1960 and 1962, a capitalist system was replaced by a socialist political and economic order, resulting in the emigration of the upper and upper-middle classes: professional, managerial, enterpreneurial, commercial and landowning. The revolution also alienated people who were less affluent. Cubans who came to the United States later, after more than a decade of socialism, were noticeably different; people of lower-middle class and blue-collar backgrounds predominated. As a result, Cubans living in the United States have come more and more to reflect the Cuban population as a whole, although the upper levels are still overrepresented, and the rural poor, in particular, are underrepresented.

Because of the relationship between class and race in prerevolutionary Cuba, whites are also overrepresented in the immigrant population. In the Cuban census of 1953, approximately 72 percent of the population was classified as white; in the 1970 census, almost 95 percent of the Cubans in the United States identified themselves as white. Socioeconomic selectivity in America explains most of this difference, but, in addition, black Cubans were probably less likely to emigrate because their perception of race relations in the United States is less satisfactory than that of socialist Cuba.

Cuba's revolutionary leaders emphasize their achievements in ensuring racial equality and describe the United States as oppressive and exploitative of black people. There is evidence that these claims are supported by the experiences of black Cubans in the United States. In Miami, black Cubans experience housing discrimination even in predominantly Cuban neighborhoods. Significantly, the majority of all Cubans in the United States live in the South, while the majority of black Cubans live in the Northeast. Black Cubans are discriminated against both as racial and as ethnic minorities; they are cut off from their ethnic group and, at the same time, isolated by language and culture from other black Americans.

Asian-Cubans represent another racial minority; most of these are of Chinese ancestry. The 1953 Cuban census data listed 16,657 people, or 0.3 percent of the population, as "unmixed persons of the yellow race." The 1970 U.S. census indicated that about 2 percent of the U.S. Cuban population was of Asian extraction. This representation of Chinese Cubans is probably a result of their role in the economy of Cuba; most of them were either small enterpreneurs or engaged in service occupations, two categories which were eliminated or curtailed by the socialist government.

The 1970 U.S. census found Cubans living in every state except Wyoming and Vermont. Despite this broad geographical dispersal, most Cubans were found in a few metropolitan centers; 99 percent were urban dwellers in 1970. Metropolitan Miami (Dade County) is the major center of Cuban residency. In 1970 more than 40 percent of all Cubans in the United States lived there. Most of the rest are in New York City, Jersey City, Newark, Los Angeles, and Chicago--all of which are large centers for other Spanish-speaking peoples.

The distribution is somewhat attributable to the policy of the U.S.-Cuban Refugee Program. Since its inception in February 1961, the program sought to minimize the impact of the Cuban influx on the Miami community by encouraging resettlement outside of southern Florida. The program provided sponsors, if the refugees had no family ties in the community, as well as job contacts and temporary assistance. Between January 1961 and December 1972, almost 300,000 Cubans were settled away from Miami, but many returned.

In the past few years, a substantial number have returned to Miami after having acquired job skills, training and experience somewhere else. Because of the large Cuban community, the climate and other considerations, most Cubans want to live in the Miami area. The skills they have acquired elsewhere, combined with the growth of southern Florida, make it relatively easy for them to find employment. Those who resettle permanently in other areas of the country are likely to be in technical or professional occupations; the Cuban population elsewhere in the United States has more education and a higher average income than the population in Florida. Given the most recent wave of immigration in 1980, in which the majority of Cuban refugees were low-income individuals with few job skills, it is too soon to determine how this most recent influx will affect the character of the Cuban community in Miami and other communities across the United States where Cubans have settled.

The economic profile of the Cuban community is mixed, though much publicity has been given to the few rags-to-riches experiences. In 1976, the median income of Cuban families in the United States was $11,773, more than $3,000 below the median for U.S. families as a whole. Only 15.4 percent of Cuban families earned less than $4,000 a year, a higher proportion than that of all Spanish-origin families. However, as a group, Puerto Ricans have the lowest median family income of all Spanish-origin families.

Most Cubans hold clerical, semiskilled or service jobs, and their unemployment rates are higher than that of the total U.S. labor force. On the other hand, Cubans in the Miami area have helped to revitalize the economy there. They have created jobs through their business enterprises, and politicians and businessmen in the Miami area are aware that they are important producers and consumers.

American Cubans are fairly well-educated. More than 51 percent of those over 25 years of age have completed four years of high school or more, and nearly 15 percent are college graduates, reflecting the nature of the migration and the compulsory education in the United States. The value that Cubans attach to success leads them to encourage their children to attend college. This parental goal has been facilitated by the community colleges and public universities in the cities where many Cubans live, particularly in Miami and New York, and by the Cuban Student Loan Program instituted by the federal government to provide financial assistance for Cuban students.

A growing number of Cubans now teach in U.S. colleges and universities. Some of them received their training in Cuba prior to the revolution, but the majority received advanced training in the United States. Many of those in the social sciences and humanities contribute to the study of Cuban society, culture and history, particularly the revolution, the migration to the United States and related subjects.

The Cuban community of Miami also has its own elementary and secondary schools. In the early years of immigration, several Catholic religious orders established parochial schools for Cuban children in the Miami area; more recently, private secular schools have proliferated. Most are small, teach most of their classes in Spanish, emphasize Cuban history, geography, and culture, maintain strict discipline and adhere to traditional values. They flourish because many Cuban parents are greatly concerned with transmitting to their children their language and culture. They are also anxious about busing and crime, immorality and drugs in the public schools.

As might be expected, given the cohesiveness of the Cuban community, especially in Miami, acculturation and assimilation have been slow. Furthermore, there appears to be a lack of social and cultural integration between Cubans and other Hispanic groups in U.S. cities with sizable and differentiated Spanish-speaking populations. Of the major Hispanic groups, only the Cubans have come as political exiles, and this has resulted in social, economic and class differences. In the New York area, Cubans and Puerto Ricans maintain distinct social distance. Many Cubans feel or perceive that they have little in common with Puerto Ricans, Mexicans or Dominicans.

There are some obvious political dimensions to this apparent lack of communication. A number of Puerto Ricans and Mexicans in the United States have been involved in militant, anti-establishment and leftist activities--strikes, civil disobedience, demonstrations, and in some cases, violence against symbols of authority. The politically conservative Cubans, wary of leftist or disruptive social movements, are most prone to disapprove of this type of behavior. However, there are signs that there may be some changes in this attitude.

During the last wave of immigration, because of the size of the influx, many of the refugees were resettled temporarily in little-used military posts in other parts of the country, especially Arkansas. Because of the problems related to finding sponsors and in confirming refugee status for many of the Cuban population, sporadic acts of violence occurred. In addition, many younger Cubans do not share their parents' conservative views, and there are now indications that many are working with Mexican-Americans and Puerto Ricans in bilingual education programs, community advancement agencies and Hispanic coalitions.

There are also indications that the relationship between some communities of Cubans and the local law enforcement agencies is becoming strained. This is particularly the case for black Cubans, many of whom suffer alienation both from their white Cuban counterpart and from native-born American blacks. They have suffered from experiences more akin to those of black Americans and have not enjoyed economic benefits similar to their white, middle-class Cuban counterpart.

Since 1975, there has been a noticeable increase in juvenile offenses by Hispanics in Dade County.[12] The most conservative available data estimate a fourfold increase in the growth of Hispanic juvenile crime between the late 1970s and any other previous year. Based on partial data, Miami judges and the Dade County Criminal Justice Council estimate Hispanic juvenile crime to be between 14 and 20 percent of all juvenile offenses committed.

Though the Cuban experience in the United States has been a long one, for all practical purposes, the bulk of their experience has been more recent, within the past thirty years. Unlike other Hispanic groups, the Cubans came to the United States as political refugees and, given the socioeconomic and political status of the early refugee population of the 1950s and 1960s, the Cuban community developed in ways quite different from other Hispanic communities. Cubans tended to be more conservative and more achievement oriented. Because many came with skills and were highly educated, they were able to play a major role in the educational and economic spheres of their communities. Recent refugee populations, however, have demographic characteristics very much unlike the earlier generation of refugees. In addition, younger

Cubans, despite their conservative upbringing, are displaying many of the characteristics of other minority youth in terms of their involvement with law enforcement and criminal justice agencies, as witnessed by the rise in crime statistics for Hispanic youth, especially in the Dade County area.

Though information is incomplete, there is evidence that Cuban youth, when involved with local law enforcement officials, are experiencing situations similar to that of other racial and ethnic minorities: racism and unequal treatment in terms of arrests, conviction, and incarceration.

These historical overviews point out the experiences of selected Hispanic-American groups in the United States. Obviously, however, it is necessary to look beyond these descriptions to examine how such experiences came about; how the various communities responded to them and how crime and criminal justice practices impinged on Hispanic-Americans lives. Several considerations emerge from these overviews. First, any analysis of crime cannot be limited to attributional studies of the offenders who get caught up in the criminal justice system. Traditionally, social science research has focused on crime as defined by law. This has validity, but there are other aspects of crime that should also be pursued. Discriminatory legislation is a case in point. Racist-oriented legislation deprived Mexican-Americans of their basic civil liberties and civil rights. Indeed, laws that legitimized the notion that whites were superior to blacks helped to create negative self images on the part of Hispanic-Americans, thus making them vulnerable to criminal activity.

The nature and impact of crime varied among Hispanic groups, depending on the composition of their immigration and their participation in the labor force. Cubans, for example, are the only Hispanics who had refugee status and tended to have a lower crime rate than, for example, Mexican-Americans and Puerto Rican-Americans, who were used primarily as cheap labor in agriculture and other unskilled and semiskilled job categories. Thus, the class nature of recent immigration must be examined to understand the present structure of many Hispanic communities: the racial/ethnic composition within and across classes needs to be studied, and the mutual perceptions by the Hispanic communities and the local law enforcement agencies must also be studied.

C. Crime and Hispanic-American Communities

1. Official Statistics on Hispanic-American Crime and Victimization

The critical role that official statistics play in the analysis of crime in general, and for Hispanic-Americans in particular, requires an examination of the nature of Hispanic crime as revealed in those statistics. The following discussion, therefore, has two purposes: it presents the extent of Hispanic crime as recorded by official agencies, and it points out limitations inherent in these statistics.

Data describing the involvement of Hispanics in criminal justice proceedings are available in a variety of sources, but the definitions of Hispanic-American in these studies often overlap. In addition, the time frames of the different data bases do not always coincide, and those that describe Hispanic populations usually must be extracted from other raw data and then subjected to additional analyses.

The main source of statistical information about the incidences of crime is the Uniform Crime Reports submitted annually to the Federal Bureau of Investigation by state reporting agencies, which obtain their data from state and local police departments. The reports vary in composition from state to state, and the data on ethnicity are not consistent and are often impossible to analyze adequately. Most reporting sources use the racial/ethnic categories of white, black, Chinese, Japanese, and other. Hispanics, as noted earlier, many of whom are racially mixed, are often classified as either white or black. For the first time, the U.S. Census in 1980 included a separate category for Hispanics. There is generally no breakdown within these racial categories of the ethnic composition. Even where the police data are adequately categorized, it is acknowledged generally that they are susceptible to bias.

Data provided by the criminal courts are also inconsistent in reporting on ethnicity. This may be due to the fact that the court structure is so diverse and/or the fact that even when ethnic information is collected, it may not be reported by the system. Data available from correctional systems tend to be the most complete within the criminal justice system, yet they, too, often do not report the ethnic composition of the inmate population. This is especially true regarding Hispanics.

a. Mexican-Americans. In states where recently large numbers of Hispanics, have settled, Hispanics were imprisoned at rates greater than their proportion in the general population. Table II-1 shows the ethnicity of populations in six states with the largest Mexican-American populations.

Table II-1

Ethnicity of Prisoners (and Population at Large)
Six States with Largest Mexican-American Population

State & Year		Percent State Population[a]	Percent Prison Population
Arizona (1979)	W	71	50
	B	3	20
	M/A	20	24[b]
California (1980)	W	72	39
	B	7	35
	M/A	17	24
Colorado (1980)	W	82	49
	B	3	22
	M/A	14	28
New Mexico (1978)	W	50	32
	B	2	13
	M/A	41	54
Texas (1980)[c]	W	68	43
	B	12	38
	M/A	19	19

[a] 1970 Census data, persons age 15-34.

[b] In Arizona, 2.7 percent of prisoners were Mexican Nationals.

[c] Texas Department of Corrections, 1980 Fiscal Year Statistical Report.

The pattern of offenses for Mexican-Americans is similar to that for Puerto Ricans; that is, opiate drug offenses are the major reasons for Mexican-Americans being imprisoned. Though the numbers declined slightly toward the end of the seventies, in recent years, 15 to 20 percent of Mexican-Americans who were imprisoned were serving terms for drug-related offenses. Only on narcotics charges, it should be noted, were Hispanics, in general, imprisoned at a per capita rate greater than that of blacks.[14] Anglos convicted of drug violations, are imprisoned far more often than minorities for drug traffic involving extremely large sums of money.

It should be mentioned that there is a movement to repeal the drug-related crime statutes in many states. Should this occur, it would be interesting to observe the effects of such change in the law on the arrest and conviction rates of Mexican-Americans. Sensitive and systematic research should follow these developments, especially as they might affect crime statistics for the Mexican-American community.

b. Puerto Ricans. According to the monthly report of ethnic distribution of correctional inmates produced by the New York State Department of Correctional Services at the end of March 1979, 19.8 percent of 20,122 prisoners of both sexes in New York State correctional facilities were Puerto Rican and 19.9 percent of the 19,568 male inmates in the state were Puerto Rican. Since New York State has the largest average Puerto Rican population, the fact that its Hispanic inmate population is comparable with the national average might suggest that Puerto Ricans are not overrepresented in the system.[15]

First, there is and has been a progressive increase in the number of new commitments of Puerto Ricans to state correctional institutions in both absolute and percentage terms since 1971. In addition, the incarceration of Puerto Ricans who live in New York City is different from that of the rest of the state.

Since 1973, the Puerto Rican share of the inmate population has increased by about 5 percent. This is significant when compared with the other main ethnic inmate populations, as Table II-2 reveals. The increase in the percentage of Puerto Ricans in state prisons reflects the increase in the Puerto Rican share of new commitments since 1971 for both male and female populations. The number of all new male commitments to the state correctional institutions increased from 4,527 to 8,111, an increase of 79.1 percent between 1971 and 1977. But the commitments of Puerto Rican males rose from 710 to 1,736, an increase of 144.5 percent in the same period, as shown in Table II-3.

Table II-2

Ethnicity of All Inmates in New York State Correctional Facilities, 1972-1979, Over Two-Year Intervals

Ethnicity	1973	1975	1977	1979[a]	Change 1973-79	Percent Change
White	3,663	4,291	4,635	5,220	1,557	+ 42.5
Black	7,766	9,100	10,285	10,784	3,018	+ 38.8
Puerto Rican	1,945	2,616	3,625	3,991	2,046	+105.2
Other	61	67	101	127	66	+108.2
TOTALS	13,435	16,074	18,646	20,122	6,687	+ 49.8

[a] As of March 30, 1979

Source: Adapted from State of New York Department of Correctional Services, Annual Statistical Reports, 1975 and State of New York Department of Correctional Services, Monthly Reports of Ethnic Distributions of Inmates Under Custody 1977 and March 1979.

Table II-3

Ethnicity of New Male Commitments to Facilities of New York State Department of Correctional Services, 1971-1977

Ethnicity	1971	1972	1972	1974	1975	1976	1977	1971-77	Percent Change
White	1,495	1,450	1,660	1,716	1,997	2,092	2,253	758	50.7
Black	2,309	3,623	3,587	3,587	3,927	4,135	4,078	1,769	76.6
Puerto Rican	710	813	1,042	1,164	1,253	1,497	1,736	1,026	144.5
Other	13	15	32	26	34	43	44	31	238.5
Totals	4,527	5,534	6,357	6,493	7,211	7,767[a]	8,111	3,584	79.1

[a] Omits ten cases for which no data are available. Actual number is 7,777.

Source: Adapted from:

State of New York Department of Correctional Services, Characteristics of New Commitments, 1976, Vol XI No. 1

State of New York Department of Correctional Services, Characteristics of New Commitments, 1977, Vol XII

The most common offense, in both 1975 and 1976, for which males of all ethnic origins were incarcerated was robbery. While this offense is more prevalent among black inmates than others, it did acount for the largest number of confinements in each of the ethnic groups. The contrast between the percentages for commitments for robbery and burglary are important. While the black and Puerto Rican populations have large percentages of commitments for robbery, the percentages in those groups that committed burglaries were substantially smaller than the percentages for the white population committing this offense for either 1975 or 1976.

However, the distribution for drug-related offenses is more revealing. In both years, the Puerto Ricans had the largest percentage of new commitments for drug offenses, while the black populations had the smallest percentage of offenders in this category. In addition, while the percentage of drug offense among new commitments increased for both white and Puerto Rican males for 1975 and 1976, the percentage for blacks remained unchanged, as shown in Table II-4.

Given such disproportionate representation in the correctional system as related to one major category, drug-

Table II-4

Percentage of Males Admitted to New York State Correctional Facilities in 1975 and 1976 by Ethnicity and Offense

	White		Black		Puerto Rican	
Offense	1975	1976	1975	1976	1975	1976
Murder/Homicide	9.2	10.0	11.1	13.3	18.0	17.3
Robbery	24.3	24.0	46.4	44.5	36.4	31.6
Burglary	22.7	20.2	9.2	9.5	10.3	9.8
Felonious Assault	5.6	4.4	5.1	5.0	6.3	4.1
Grand Larceny (not auto)	4.8	4.0	2.3	2.7	1.3	.9
Rape	2.3	2.7	3.5	3.4	1.8	2.6
Sex Offenses	2.9	3.1	1.2	1.0	1.4	.7
Drup Offenses	13.9	17.5	10.4	10.4	16.1	25.3
Dangerous Weapons	3.7	3.1	6.1	5.2	5.8	5.2
Other Felonies	10.0	10.6	4.2	4.6	2.0	2.2
Totals (%)	99.4	99.4	99.5	99.6	99.6	99.7
Totals (N)	1997	2092	3927	4135	1253	1497

Note: Columns do not add up to 100 % because of rounding to one decimal place.

Source: Adapted from:

State of New York Department of Correctional Services Characteristics of New Commitments, 1975, and Charact New Commitments, 1976, Vol. XI, No. 1

1975p<.001
1976p<.001

related offense, it is interesting to speculate on the correlation between drug-related crimes and the representation of Puerto Ricans in the correctional system. Further research might go beyond available statistical data and provide some insights into this phenomenon.

c. Cuban-Americans. Present data-reporting systems do not allow for the presentation of accurate statistics regarding the presence of Cubans in the correctional system. Information regarding Cuban criminal activity has been culled from newspaper reports and from the Cuban National Planning Council in the Miami-Dade County area.

The growth of Dade County's Cuban population with the concurrent flight of thousands of non-Cuban whites from the Dade County area has been a source of concern to local politicians and local law enforcement officials. The influx of tens of thousands of Cuban refugees into Miami between April and June of 1980 exacerbated these concerns. Local newspapers reported that 18,000 to 20,000 hard-core criminals were among the new refugees. However, the latest reports have reduced these numbers by 90 percent, to about 1,800 to 2,000.[19]

At the present time, more than 1,000 Cubans from Mariel (a major port city) are being held in various detention centers in the United States. The Cuban community is concerned about the early release of immigrants who were arrested in Cuba for offenses such as stealing food or trying to leave the country illegally. Also, recently, several Mariel Cubans already settled in Miami have been mistakenly arrested and delivered to INS officials. Such arrests occurred as these persons were waiting for a bus dressed in work clothes or upon their being stopped on minor traffic violations.

The absence of comprehensive records makes it difficult to discern any patterns of criminal behavior regarding this population. Further research should pay attention to the categories of arrests for this subgroup, especially given the politically sensitive nature of the Cuban refugee issue in Miami-Dade County.

The incarceration of Hispanic-Americans is specific to certain geographic areas, rather than to the nation as a whole. In California and much of the Southwest, the Hispanic-American inmate population is almost totally Mexican-American, while in the Northeastern states, it is almost entirely Puerto Rican. In Florida, it is almost entirely Cuban. Still, given the issues related to definition of the population, further research might reveal errors which are significant. As mentioned in the introductory section of this chapter, the migration of Central and South Americans to the United States has increased considerably; little attention has been given to the presence of any of these various national groups. As indicated previously, there are also problems in getting local and state law enforcement officials to report accurately the participation of the major subgroups of Hispanics in the criminal justice system. Thus, it may be impossible to expect reporting of smaller subgroups such as Dominicans and Brazilians.

2. Offender Characteristics

All major studies of criminal activity have provided a profile of the typical inmate in correctional institutions as most likely to be minority, male, young, unemployed at the time of arrest and undereducated. While this profile may be applicable to blacks, it is problematic for Hispanic-Americans. Presentations before the Council and other conferences and symposia related to crime in Hispanic communities have all attested to the absence of accurate data on the participation of Hispanics in the criminal justice system. There are few statistically accurate data to suggest the typical profile of the Hispanic offender.

In a presentation before the National Hispanic Conference on Law Enforcement and Criminal Justice, a judge of the district court in El Paso, Texas, stated:

> There is no accurate statistical information available on the characteristics of youth that are processed through the juvenile justice system. A major obstacle is the fact that there are no accurate population figures available on youth according to racial classification nation-wide. As an example, in our community of El Paso County, persons who are arrested are only reported by age, sex, and race--race being divided into two groups, either white or black.[20]

However, another study which concentrated on Hispanics, by using data available from New York State, reported an inmate profile that was not consistent with the national profile. When educational attainment and ethnicity were correlated, the Puerto Ricans in the group had characteristics considerably different from those of the other inmate groupings. When compared to white and black offenders, Puerto Rican offenders were less likely to have completed high school. Indeed, of the group, almost half of the Puerto Ricans had not gone beyond elementary school, in comparison to less than 20 percent of the white and a little more than 20 percent of the black offender grouping.[21] Thus, in this one major study, there was considerable evidence to disprove the widely-held view that prisons are made up of those who are primarily uneducated or undereducated.[22]

The same data did reveal, however, that there was a uniform concentration in the unskilled occupations for all of the new inmates. The differences of occupations between the three ethnic groups were not significant, as tends to be the case for ocupational groupings by ethnicity for society as a whole. Table II-5 gives these percentages.

Table II-5

Percentage of New Male Commitments to New York State Correctional Facilities in 1976 by Ethnicity and Education

Ethnicity	Number	Percent	Elementary School	High School Non-Graduate	High School Graduate	College	Other
White	2092	99.7	22.1	37.1	26.1	11.9	2.5
Black	4135	99.8	19.2	51.3	19.1	7.5	2.7
Puerto Rican[a]	1540	99.9	39.9	40.6	11.0	3.6	4.8
Totals[b]	7767	99.8	24.1	45.4	19.3	7.9	3.1

[a] Includes 43 "other" ethnic cases which were computed with Puerto Ricans in official reports.

[b] The total N omits 10 cases for which no data are provided by the state. The actual number of new commitments was 7,777.

Note: Rows may not add up to 100 percent owing to rounding to one decimal place.

Source: Adapted from:

State of New York Department of Correctional Services, Characteristics of New Commitments, 1976, Vol XI No. 1

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Although the representation of Hispanics in the offender/inmate population may be difficult to discern in some states, if the factor of race alone is accounted for, the representation of minorities is still disproportionate to their participation in the general population. The inaccurate reporting or nonreporting of the ethnicity of the offender creates a multitude of problems for advocates of the various ethnic and racial communities and enables law enforcement agencies to use statistical data for their own political purposes. For example, some studies have concluded that the differences between treatment received by minority and majority youth are not substantial. However, if Spanish heritage youth are designated as "white," this may be the case; if designated as minority, the picture changes radically. This was clearly pointed out in the case of El Paso County, Texas, where such an allegation was made. The Hispanic respondent noted:

> . . . the author overlooked the fact that, when combined, the different ethnic classifications of the study (Spanish-heritage, black, and other) accounted for 75% of the juveniles detailed versus 19% of whites detained (underline provided by respondent).[23]

3. The Impact of Crime on Hispanics

A report of Bureau of Justice Statistics, published in June 1980, presented a disturbing picture of the impact of crime on Hispanics in the United States.[24] This report states that Hispanics generally have a higher victimization rate than non-Hispanics, despite the fact that reporting rates for both Hispanics and nonHispanics are about the same and despite the fact that crime rates within the Hispanic communities across the country have not appreciably changed in recent years. While the distribution of crime within the non-Hispanic population is not unlike the distribution within the non-Hispanic population, the target of crime within the Hispanic population is considerably different from that within the non-Hispanic population.

In terms of types of crimes, Hispanic households were more likely than non-Hispanic households to be the victims of residential burglary, larceny and motor vehicle theft. For personal crimes, there were no significant differences between rates for assault on Hispanics and non-Hispanics, but individuals of Hispanic origin had a higher rate of robberies than did non-Hispanics. These data are displayed in Table II-6. In addition, non-Hispanics were more likely to be victims of personal larceny without contact, while Hispanics seemed to be the more likely victims of pocket picking and purse snatching.

Table II-6

Personal and Household Crimes: Victimization and Police Reporting Rates, 1973-78 Average

Sector and Type of Crime	Vicitimization Rates		Police-Reporting Rates[a]	
	Hispanic	Non-Hispanic	Hispanic	Non-Hispanic
Personal sector[b]				
Crimes of violence	37.1	32.9	46.3	46.5
Rape	1.0	0.9	70.3	52.2
Robbery	*8.7	6.4	46.1	53.5
Robbery with injury	**3.1	2.1	54.7	64.8
Robbery without injury	**5.6	4.3	41.4	48.0
Assault	27.4	25.6	45.5	44.5
Aggravated assault	11.8	9.8	56.4	53.7
Simple assault	15.6	15.7	37.3	38.8
Crimes of Theft	*86.6	95.9	**21.6	25.0
Personal larceny with contact	4.1	2.9	25.8	35.1
Purse snatching	1.6	0.9	34.1	44.8
Pocket picking	2.5	2.0	20.6	30.7
Personal larceny without contact	*82.5	93.0	21.4	24.7
Household sector[c]				
Burglary	*100.9	89.5	46.2	48.0
Forcible entry	*39.7	29.6	69.0	71.4
Unlawful entry without force	35.5	39.9	34.7	38.1
Attempted forcible entry	**25.7	20.0	26.9	32.9
Household larceny	*140.5	119.9	*18.7	26.0
Less than $50	**83.8	72.3	*8.6	15.0
$50 or more	41.6	35.0	*39.2	50.1
Amount not available	6.1	4.3	17.5	19.6
Attempted larceny	9.0	8.3	19.3	23.9
Motor vehicle theft	*27.6	17.6	68.6	68.4
Completed theft	*17.0	11.2	**94.3	88.2
Attempted theft	*10.7	6.5	27.9	34.1

[a] Percent of vicitimizations reported to the police.
[b] Victimization rates per 1,000 persons age 12 and over.
[c] Victimization rates per 1,000 households.

Note: Detail may not add to total shown because of rounding.

* Significantly different from the rate for non-Hispanics at the 95-percent confidence level.

** Significantly different from the rate for non-Hispanics at the 90-percent confidence level.

Violent crimes were more often committed against Hispanics than non-Hispanics. In approximately two-fifths of all crimes involving Hispanics, one or more guns, knives or other weapons were wielded. There was some indication in the report that weapons were more likely to be present during a personal robbery than an assault, and when the offender was a stranger rather than a non-stranger. These data are given in Table II-7.

The Hispanic victim was more likely to be a male than a female. This differs significantly for Hispanics and non-Hispanics. Furthermore, young persons bewteen the ages of 12 and 19, irrespective of sex, had a much higher victimization rate than the elderly. And, in terms of high violent crime rates, they were more likely to exist for the poor, the unemployed and the divorced or separated. In terms of this latter set (the poor, the unemployed, the divorced or separated), this tended to be true for both the Hispanic and non-Hispanic populations.

The Bureau of Justice Statistics' report is disturbing. Violent crime in the Hispanic community hits hardest at those on whom the community has the greatest reliance: males, whose strength and income is the foundation of the community and Hispanic family, and the young, who represent an investment in the future of the Hispanic community. That Hispanic households are more prone to burglary, larceny and motor vehicle theft is equally disturbing, given the low-income status of most Hispanic households. The loss, by low-income Hispanics, of their meager possessions, purchased with limited earnings, leads to frustration, anger and disillusionment. To those for whom an automobile is essential to getting to work, the loss of one's car can be devastating, especially in communities in which public transportation is inaccessible, limited and/or expensive.

The BJS report further states that the reporting rates for Hispanic and non-Hispanic households were roughly equivalent. This must be looked at with caution, since, in testimony before the Council, several witnesses reported that many Hispanics distrusted the local law enforcement officials,[28] that Hispanics have reported that local law enforcement officials are slow to respond to reports by Hispanics that a crime is in progress,[29] and that there is a history of distrust between Hispanic communities and local law enforcement.[30]

Table II-7

Personal Crimes of Violence: Percent of Incidents in Which Offenders Used Weapons, by Type of Crime and Victim-offender Relationship, 1973-78 Average

Type of Crime	Hispanic			Non-Hispanic		
	All Incidents	Involving Strangers	Involving Non-strangers	All Incidents	Involving Strangers	Involving Non-strangers
Crimes of violence	42.0	46.3	33.0	36.4	40.0	30.3
Rape	28.6	35.3	**9.1	26.2	30.0	16.8
Robbery	52.1	54.3	34.4	47.5	50.7	33.8
Robbery with injury	55.7	58.6	**36.3	45.4	46.9	39.7
Robbery without injury	50.1	51.9	33.5	48.6	52.6	30.4
Assault*	39.1	96.8	95.2	34.0	36.6	30.3
Aggravated assault	96.2	96.8	95.2	94.2	95.4	92.1

* Includes data on simple assault, which be definition does not involve the use of a weapon.

** Estimate, based on about 10 or fewer sample cases, is statictically unreliable.

D. Hispanics, Law Enforcement Agencies and the Criminal Justice System

1. Hispanics and Local Law Enforcement Agencies

Injustices on the part of majority Americans against people of Mexican descent began over a century ago. It was first demonstrated in the doctrine of "manifest destiny," a vehicle for denying Mexican citizens who lived in the Texas territory their civil rights. More recently, it was enunciated by King Fisher, an infamous Texas gunman, who said, very graphically, that he had "thirty-seven (notches on his gun), not counting Mexicans."[31]

At Ludlow, Colorado, in 1914, striking miners were assaulted by militiamen and company guards who shot at the miners' tents, setting them on fire. Of the 18 victims of the Ludlow massacre, half were Mexican-Americans. The next year three Mexican unions struck mines in Arizona over the issue of a "Mexican rate" and outrage over a foreman who sold, and demanded money to hold, jobs. The company sealed the mine, and eventually hundreds of miners were arrested before the National Guard was called in. Along the border, violence against Mexicans was so common that U.S. Secretary of State Hughes, in 1922, warned the governor of Texas that federal action would be taken to protect Mexicans if killings of them did not end.[32]

In the late twenties, the first strike of Mexican farmworkers, who had organized into the Confederation dos Uniones Mexicanos, was broken up by wholesale arrests. These arrests were followed by deportation of everyone closely connected to the union. There were several major farmworker strikes by Hispanics in the thirties, in which the police were used as strikebreakers. In 1936, a strike by Mexican farmworkers in Southern California was met by a police force of 1,500 men.

> [Strikers were] pursued by the police to their homes and, in a number of cases, tear-gas bombs were tossed into shacks where children were playing.[33]

In the zoot suit riots in Los Angeles in 1943, hundreds of sailors formed a convoy of taxi cabs and launched an attack on Mexicans. A prominent national magazine described the attack this way: "The LAPD practice was to accompany the caravans in police cars, watch the beatings and jail the victims."[34] In March 1948, Los Angeles police officer Keyes killed Augustin Salcido, age 17. Keyes "had put bullets into Mexicans quite a few times . . . and never any fuss made about it . . . ." In private, Keyes had boasted of having 12 notches on his gun. Three bullets went through

Salcido's head, one leaving powder burns. Keyes's defense was that Salcido was escaping; Keyes was acquitted.[35] In the early sixties, two Puerto Ricans were shot and killed by police at a location far from where they were arrested and placed in a police car. The officers claimed that one victim pulled his gun at the second location. Both were acquitted. This incident precipitated one of the first instances in which Hispanics demonstrated outside a police station. In 1967, the Texas Advisory Committee to the Commission on Civil Rights was told in its hearings, "There's a lot to the saying that you hear in south Texas that all of the Rangers have Mexican blood. They have it on their boots . . . ."[36]

Yet these incidents and many more did not make Hispanic problems with law enforcement prominent to the Anglo public. In 1968, according to a Civil Rights Commission report: "There has been no concerted legal attack on the civil rights problems of Mexican-Americans. Very few suits have been brought against the police in cases of alleged brutality . . . only one such involving Mexican-Americans has gone to court . . . ."[37] Mexican-Americans who felt they were discriminated against typically lacked the money to prosecute a case, and many were too afraid to protest--even in the courts.

But in the last few years, the issue of the treatment of Hispanics by the criminal justice system has received more attention by the media and is becoming a concern of government and politicians. These changes are due in part to the growth in the Hispanic population from five million in 1960 to three or four times that number today, and to the attention this growth is now receiving from society. It is also due, in part, to the impact of the Civil Rights Movement. The 1964 Civil Rights Act, various affirmative action programs, legal redress and suits brought by Hispanics against law enforcement institutions under federal civil rights statutes are having an impact on government and society. Yet, despite the fact that Hispanic problems with the law enforcement system are becoming known and some first few steps are being taken, the situation of Hispanic treatment under the law remains critical.

The police force is the most visible government agency and is the first criminal justice contact point between Hispanics and the law enforcement system. More than any other agency, the police draw the ire of Hispanic communities. With few exceptions, police do not speak Spanish and know little about Hispanic culture. In the early seventies, an attorney for the Mexican American Legal Defense and Education Fund (MALDEF), testifying before a California legislative committee, described the Los Angeles police working in the Chicano communities:

> Anglo police officers, who come into East Los Angeles . . . view it as an armed camp where the people look . . . speak . . . and eat different . . . . [It] is a police force which is mainly Anglo, insensitive, fearful, and heavily armed with blackjacks, night sticks, mace, guns, and helicopters, who are set free to deal with a minority community they do not understand.[38]

The seriousness of this problem was emphasized by Gilbert Porpa, director of the Community Relations Service of the U.S. Justice Department:

> I believe that the anger, frustration, and distrust existing between police and minorities are vital contributors to this undeclared war . . . . Minorities, especially minority youth, generally see the police as representing everything that is socially and institutionally denied them. They are the most visible agents operating in their communities to maintain the status quo.[39]

A disturbing problem in the Hispanic communities is the perception that the police treat them without dignity, respect and compassion. Though not so well publicized as physical brutality by the police, "psychological brutality on the part of many police officers" was viewed in a 1968 report prepared for the Civil Rights Commission as "more subtle, but undoubtedly more widespread."[40] Numerous Hispanics experience discourtesy, harassment, threats and violence at the hands of the police. Where police departments are most "professional," it is often disturbing to Hispanics when they are treated by an Anglo agency, especially the police, in a cool, crisp and impersonal way. As a result, community and control agency values clash. Hispanics perceive the criminal justice system as being devoid of humanistic concern for their values.

"Minority communities are patrolled while the communities of the majority are protected," said Robert Lamb, Jr., director of the Seattle Office of the Community Relations Service.[41] In Hispanic communities, police have a high presence, shown in police-initiated actions such as stopping, questioning, interrogating and searching suspects. Armando Morales found that, even though there was an Anglo area in Los Angeles with a higher crime rate than a similar Mexican-American section, there were far more police in the barrio.[42] Similar patterns of assigning more police to Chicano areas have been noted by the Community Relations Service and other agencies.

Identical problems receive different police responses. In an East Los Angeles neighborhood that is heavily Chicano, Morales found an alcoholism rate identical to that of a wealthy Los Angeles West Valley area which is almost totally Anglo and of the same size numerically. However, the police made 800 drunk and drunk-driving arrests in the Chicano area and only 125 in the Anglo area.[43] Judge Ben Roybal, of Albuquerque's Municipal Court, conducted a survey of traffic citations given in the overwhelmingly Anglo northeast section of Albuquerque, since he suspected Chicanos were being singled out there. In 1977, of 517 citations given, only 20 were issued to Anglos; 95 percent were issued to Chicanos.[44]

When it comes to responding to calls for assistance, the Hispanic community perceives the police as being inadequate. Gilbert Pompa notes that Hispanics and other minorities complain that police service is not as fast, fair or effective in their parts of town as in white neighborhoods.

These perceptions have led to distrust of local law enforcement agencies, even when law enforcement assistance is needed. A study in Brooklyn, New York, in 1975, notes that Hispanics infrequently reported crime to the police:

> Since most Hispanics in that borough reside in low-income neighborhoods with high crime rates, Hispanics would also be expected to make up an equally high proportion of the complainants in Brooklyn . . . . This fact . . . expresses the alienation . . . between the Hispanic community and the criminal justice system.[45]

Minority members who do not trust the police are faced with a dilemma: they are fearful victims of criminals, but are also hesitant to call police for assistance because of distrust and fear. Understandably, according to Pompa, the police generally lack confidence that minorities will voluntarily come forward and assist in the detection of crime and the prosecution of criminals. They tend to identify minorities and crime as "part and parcel."

Throughout the Mexican-American and Puerto Rican mainland communities, it is common to hear people say, "When I was a kid, whenever I saw a cop, I took off in the opposite direction." So, it is not surprising that, among Puerto Ricans surveyed in New York, 55 percent rated police treatment as "bad" or "very bad" and only 17 percent of the sample rated it as "good" or "excellent."[46]

The history of Mexican-Americans and local law enforcement agency relations has been a sad one. Mexicans have come to view local law enforcement agencies and their personnel as instruments of oppression and suppression of their legal and normal aspirations. However, of all the concerns which Mexican-Americans and other Hispanics have regarding local law enforcement agencies and their interactions with their respective communities, none is more volatile than the issue of the use of "deadly force" by police.

2. The Use of "Deadly Force" by Local Law Enforcement Agencies Against Hispanic Communities

> Police use of excessive force looms on the horizon as one of the most serious and inflammatory community relations problems facing our nation. No other single issue provikes both majority and minority resentment, or has more potential for spurring community conflict, than this one . . . . Minorities still see police as an alien occupation force. Each group still harbors a measure of fear that it may be the victim of physical violence inflicted by the other.[47]

Nothing in Hispanic communities arouses more anger or precipitates protest demonstrations more than when police unjustifiably kill an innocent citizen. Police use of "deadly force" has been the dominant concern of numerous Hispanic communities for a long time, and there have been repeated angry local protests over killings of farmworkers, striking factory workers, undocumented workers and local citizens by local law enforcement agencies. Outside of Hispanic communities these protests were not considered seriously or were considered to be isolated cases, until recently.*

By the end of the 1970s the issue of police killings of Hispanics could no longer be neglected by the media and government. Much of the credit for forcing the issue on the public consciousness belongs to the Mexican-American Legal Defense and Education Fund (MALDEF). With financial support provided by the Carnegie Foundation, MALDEF gathered information on over 100 instances in which Hispanics were brutalized and focused on 56 cases, which they documented thoroughly. The list includes 32 people killed, 13 of whom were in police custody. Of those victims who died in jail, none had committed a serious crime. Often the brutality was chilling. One victim had 92 wounds over this body. Police at first claimed he committed suicide; they later said the death was accidential. Another victim was beaten to death by a sheriff wielding a pool cue. Another, beaten with blackjacks while being arrested, was found dead after having been kicked and beaten in his cell. Fifteen of those killed had committed no crime at all.[48]

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* In the early seventies, Armando Morales wrote Ando Sangrando: I Am Bleeding, the best case study of extreme police violence in one city--Los Angeles. Morales took the book to seventeen publishers before it was accepted. To this day it is unnoticed and uncited by virtually every non-Hispanic writer on police violence.

In Los Angeles, a Mexican-American went to the aid of a man being beaten by two derelicts, who turned out to be undercover policemen; they shot the Good Samaritan without identifying themselves. In another case in National City, California, an officer enroute to investigate a purse-snatching saw a Hispanic one and a quarter miles away from the crime scene and shot him dead because he ran away. The victim had reason to run--the officer had previously threatened him; however, he was not the person who had taken the purse.

Jose Campos Torres was so brutally beaten by Houston police while handcuffed that a desk sergeant refused to book him into jail; instead, he ordered the arresting officers to take him to a hospital for medical treatment. The officers took him to a bayou with water 14 to 16 feet deep and pushed him in. Torres drowned.

MALDEF's research concentrated on the Southwest--all but 5 of the 56 cases occurred in five southwestern states--and their data substantiate that extreme police violence against Hispanics is widespread in that region. The MALDEF data indicated the problems with the police were organizational and systemic. Certain policemen were involved again and again in brutality cases. In Philadelphia, MALDEF charged that officer Gerald Salerno had a notorious reputation for violence against the Hispanic community. He was party to the brutal beating of Edgard Ortiz in June 1977 and a month later killed Jose Reyes. In Albuquerque, officer James Babich was involved in three cases of alleged brutality over a six-month period; all involved beating Hispanics with a heavy flashlight. Only the last beating killed someone.[*] Christopher Dean, the policeman who killed Jose Sinohui in South Tucson in July 1977 had previously brutally beaten a private citizen in a personal matter.

Of the 56 cases MALDEF investigated, policemen were convicted in only six of the homicide cases by state juries and in only two cases by federal juries. Some sentences are considered "outrageously lenient."[49] The policeman who killed Santos Rodriguez in Dallas was paroled in ten months; the three convicted in drowning Jose Campos Torres in Houston were sentenced to a year and a day.

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[*] Two years after the MALDEF report appeared in *Agenda* (Sept./Oct. 1978), former police officer James Babich ran for Sheriff of Los Alamos, New Mexico. He was, however, defeated.

The number of excessive force complaints received by the Justice Department's Community Relations Service doubled from 185 in 1974 to 382 in 1978, remained steady in 1979 and then increased another 40 percent the first half of 1980. Similar reports were addressed a decade previously in the U.S. Commission on Civil Rights' 1970 report on Mexican-Americans in the Southwest. A review of the Department of Justice files covering January 1965 through March 1969 showed 256 complaints of police abuse, mostly of a serious nature, made by Spanish-surname persons in the five southwestern states, "over half from Texas." In addition, the American Civil Liberties Union of Southern California had received "174 complaints of serious police brutality against Mexican-Americans" between 1967 and 1969.[50]

The MALDEF data show that many individual policemen have a low regard for the lives of Hispanics.* Yet the police are considered as "expert Witnesses" whether or not they tell the truth, and are always called on to give testimony in cases brought against their colleagues in the department. Despite this knowledge and, often, despite testimony by their colleagues about their negative behavior, the outcome of such cases is usually the same: the policeman is acquitted.

District attorneys are typically loathe to bring a charge against any policeman because the vast majority of their prosecutions require police cooperation. The internal review procedures of most police departments are flawed because they ask the police to police themselves. Other forms of organizational control are equally flawed. There is a mayoral advisory board in Albuquerque, a civilian review board in Denver and a civilian review board in Chicago appointed by the police chief. The Chicago review board, it should be added, has no funds with which to operate. Still, in instances where complaints were brought against the police in these cities, the results were the same: no action taken against the officer charged. There was one exception; in Denver, in 1979, three of the 92 complaints about police brutality were sustained by the police department's review panel.

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* In a recent tape-recorded interview played before a coroner's inquest in the shooting deaths of Jual Louis Garcia and Jeff Cordova, August 14, 1980, Officer Glen Horner jokingly admitted to fellow officers, "When I get cleared, they're gonna bug me until I put two notches on my gun." Longmont, Colorado, Times-Call, September 11, 1980.

When a case of police brutality be tried by a jury, the police officer is unlikely to be convicted.

> Even in the few instances when an indictment results, generally white juries will acquit a white police officer who kills a Hispanic or a Black.[51]

If the judge sentences the officer, the term is usually low or probated. Hispanics cannot help but compare the conviction rate and level of punishment of police officers with the rate and punishment of Hispanics. As Pompa has observed:

> It is fair to say that Hispanics feel that, compared to their Anglo counterpart, if detained by a law enforcement officer, they stand a greater chance of being arrested. If arrested, they stand a greater chance of being prosecuted. If prosecuted, they stand a greater chance of being convicted. If convicted, they stand a greater chance of receiving a disproportionately longer sentence. If sentenced, they stand a greater chance of being denied parole.[52]

Since MALDEF and numerous others have pursued the issue of excessive police violence, there have been changes. Police administrators in New York City in the early seventies[53], and Los Angeles in 1977[54] tightened their regulations regarding "justified shootings," and the number of shots fired when suspects had no weapons declined substantially (though several police killings, which have angered Hispanic populations, have occurred in both cities since then). Twenty-four states, though, still permit deadly force against any person suspected of having committed a felony.

Though Hispanics welcome any changes that will reduce the number of shootings of unarmed felons, the consensus is that the problem of police use of excessive and deadly force persists. Almost all police departments are perceived as failing to screen out officers with prior histories of abuse of citizens and as being supportive of offending officers. This reinforces feelings that law enforcement agencies do not respect Hispanics and that America still maintains a double standard of justice.

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3. Hispanics in the Law Enforcement and Criminal Justice Systems

Increasingly, there is a consensus developing that cultural considerations ought to play a role in the criminal justice system. However, the definition of that role (or roles) is yet to be outlined. Most of the attention surrounding minorities in the law enforcement and criminal justice systems has come directly from the need to deal with a crisis: pressure to be responsive to the "equal employment opportunity" legislation and/or affirmative action decrees, or the need to have officers who can speak the language of an increasingly non-English-speaking local population. But, as one authority has pointed out:

> . . . . there are few, if any, attempts to develop a cohesive rationale for sub-cultural actualities of the introduction of Hispanic officers and treatment personnel into the criminal justice system.[55]

What are the pressures placed on Hispanics who participate in the law enforcement and criminal justice systems, not as offenders, but as law enforcers and jurists? How do they deal with these pressures? How are their behaviors perceived and interpreted by their peers in the professions and by the Hispanic communities, for whom they are held up as role models?

The laws of the United States are legislated, interpreted and administered by an almost exclusively Anglo government. The result is that legislation which is often unfavorable to the best interests of Hispanics is passed, as in the case of immigration laws. Laws are administered unfairly and often in a discriminatory manner. As noted, prosecution and incarceration are disproportionately high for the Hispanic population involved.

Today, there is no Hispanic U.S. States Senator. There are only five Hispanics out of 437 U.S. congresspersons. No member of the House Judiciary Committee or the House Subcommittee on Crime--neither congressperson nor staff--is Hispanic. There is also underrepresentation of Hispanics in almost every state and city legislature.

There are too few Hispanic lawyers in the United States. Currently, there are more than 600,000 lawyers in practice.[56] Though the Hispanic population in New York City exceeds 1.5 million, for example, there are only 400 Hispanics in legal practice[57]. And the situation does not appear to be improving. According to the American Bar Association, for 1978-1979, of 122,801 students attending 169 accredited law schools, 1,558 were Mexican-American, and 714 were other Hispanic-Americans.[58]

There are too few Hispanics in the judiciary. At the federal level, it was not until October 1979 that the first Puerto Rican, Jose Cabranes, was named to a federal judgeship on the U.S. mainland.[59] According to Benjamin Aranda, III, in testimony before the Council:

> In San Diego . . . there is no Mexican-American judge; in fact, there is no Mexican-American federal judge in the entire state of California . . . .[60]

In Texas, in 1978, Mexican-Americans represented 19 percent of the state's population, but comprised only 2.4 percent of appellate court judges, 5.3 percent of the district judges, 3.5 percent of the county judges, and 9.3 percent of the justices of the peace.[61]

In the prosecuting attorney category, the figures are equally as grim. At the federal level, in the U.S. Department of Justice, in 1979, only 1.6 percent of the 3,920 attorneys were Hispanic.[62] All Hispanic employees, including attorneys, within the U.S. Department of Justice for 1979 comprised just 5.4 percent of the total, excluding those in the Immigration and Naturalization Service, where they comprise 3.6 percent of the 40,000 employees.[63] A similar situation prevails at the state and local levels. In Texas, only 3.3 percent of the district attorneys are Hispanic.[64]

At the law enforcement level, the figures are no more encouraging. Though Hispanics make up more than 1.5 million of the population of New York City, and though there are more than 20,000 uniformed officers employed by the city, less than three percent of that number are Hispanic.[65] In Dallas, Mexican-Americans comprise just three percent of the 1,994 uniformed officers;[66] in Los Angeles, Mexican-Americans represent 10 percent of all uniformed officers;[67] and in Philadelphia, Hispanics are 0.4 percent of all uniformed officers.[68]

What are the experiences of Hispanics who have been recruited? How are they employed? What pressures do they have to face, and how do they cope with these pressures? Are Hispanic concerns in any way ameliorated by the mere presence of Hispanics in the system? There is some evidence that the representation of Hispanics in the law enforcement and criminal justice systems does not bring about any significant change. While it is unclear whether this absence of change is due to low representation or other factors, the presence of Hispanics in the system is not sufficient. Probably the best evidence of this negative picture is the perception of Hispanics about Hispanic policemen in those departments where their representation has been increasing. Many Hispanics state that the benefit derived from having a Hispanic officer is not sufficient to compensate for the brutal treatment they receive.

> There's an old rule in the *barrio* that says whenever a cop stops you *que tengas cuidado*. Be careful. Rule No. 2. If *he looks like you*, be twice as careful. He may look like you and talk like you. He may have that same accent and the same paint job. Maybe he's even a bit more *bronze*; but that doesn't mean you're going to relate . . . . The Chicano cop's reputation is built on busting heads.[69]

When a Hispanic joins a police department he enters a very powerful peer group society which, with very rare exceptions, is seen by Hispanics as having a repressive orientation. The social pressure on new Hispanic recruits is especially powerful. They tend to be given unwanted assignments, such as undercover work in the Hispanic community. They enter the force under suspicion, as one of "the enemy camp," and are held to higher performance standards than are Anglo recruits. Many Hispanic police believe that they must demonstrate "fairness," to the point of being especially severe in dealing with fellow Hispanics.

The assignments given Hispanic officers and the pressure from their peers to become "one of the team," coupled with the normally arduous aspects of police work, create severe problems for Hispanics in terms of their relationships with their families and the community. Increased pressure tends to isolate the officers from their social/familial environment.

Another aspect of being a Hispanic officer is that it forces the person to look at himself and to question what it means to be both Hispanic and a police officer. As mentioned in the introduction, the immigrant experience in some instances has led to the individual internalization of the racism that has been forced on him or her. If these feelings are not addressed in one's youth, they rise to the surface and cry for attention in one's later life. Thus, it is not surprising that often some Hispanics who are negatively afflicted by racism themselves become members of local police departments and use their positions of authority as a means, not for addressing the racism, but for perpetrating it. Fortunately, however, their numbers are few.

On the other hand, for those Hispanics who are sensitive to the contradictions inherent in racist law enforcement and criminal justice administration, the picture also is not a good one. Those who attempt to redress the grievances of the Hispanic community often find themselves isolated within their profession. They are given the least desirable assignments; they find it difficult to receive promotions; they are written up for minor infractions of the local department's rules. Every attempt is made to force the individual to change his behavior and accept the behavioral code of the department or to leave the department. Nationally, Hispanic law enforcement leaders are beginning to meet, to coalesce and to define the role of police in Hispanic communities differently from what has been the practice to date. The same writer who wrote "the Chicano cop's reputation is built on busting heads" described a recent National Hispanic Conference on Law Enforcement and Criminal Justice held in Washington, D.C., in September 1980 in this manner:

> The multi-hued Chicano and Hispanic police officer is . . . just . . . finding identity and organizing . . . . A new day is dawning. They talked about ways to educate their colleagues. They dealt with the role of police and saw "protector" rather than "enforcer."
>
> They discussed their own isolation in the station house and saw its parallel to the isolation barrio people feel. They talked earnestly about the same problems that others in the barrio have been begging to be addressed for years . . . .
>
> *To survive before, they had to reject their community. To progress now they need it.* [Emphasis in original][70]

If the increase in the numbers of Hispanic line officers has not fundamentally improved police practices in Hispanic communities, it has set the stage for Hispanics to move into administrative positions. To what extent they will be blocked from entering, or limited in their impact on, police policy-making circles remains to be seen.

4. Hispanics and the Court Systems

Most Hispanics who participate in any court-related procedure experience cultural shock; the entire set of procedures is usually alien to them. They sense that they will not be adequately represented by their court-appointed lawyer, since, in most instances, the lawyer does not understand Spanish and the accused is not conversant in English. They feel that they will be judged by a narrow cross section of the community, since few Hispanics are on the juries. They do not understand the proceedings, since American jurisprudence is different from what they may have experienced in their homeland.[71] And they feel ashamed, for in most Spanish-speaking countries to be accused of a crime and judged guilty are tantamount to social ostracism.[72] Thus, the accused fears the outcome of the proceedings and, anticipating the worst, often through his or her withdrawal in his or her defense, aids in the fulfillment of that outcome.

The first problem for Hispanics is that of raising bail, since most Hispanic offenders are poor. A study by the Legal Aid Society of New York City revealed that over 63 percent of the inmates at Rikers Island, a New York City maximum security prison, were there not because they had been convicted of a crime but because they were too poor to make bail. There have been instances of people being incarcerated from six months to a year for minor crimes only to be found innocent.[73]

Hispanics need representation in the prosecutor's office. It is the prosecutor's office that makes the initial determination on whether a person will be charged with a crime and held subject to trial. A prosecutor familiar with Hispanic customs and culture can often deal with what might otherwise be a miscarriage of justice, inasmuch as many incidents before courts are generally a result of misunderstandings and family-related situations.[74]

If held for trial, the accused Hispanic needs a lawyer who understands his culture, his language and his position regarding his case. As cited previously, the number of Hispanics who practice law is small, and there is a dearth of lawyers who are committed to equal justice and who also are sensitive to the problems and needs of Hispanic people. If the case goes to trial, there is a need for Hispanic representation on the juries. This is seldom the case, however. Those who sit on juries have been overwhelmingly Anglo and considerably older and of higher socioeconomic class than Hispanic defendants. Hispanic participation on juries has been disproportionately low. Part of the reason for the low participation is related to the process for jury selection, another is related to the low renumeration which jury members receive, and still another is related to Hispanics' unfamiliarity with American jurisprudence. For example, in Bronx County, New York, 30 percent of whose population is Hispanic, only eight percent of the juries in criminal cases consisted of Hispanics, according to a recent study of juries.[75] Hence, the outcome for Hispanic defendants is that, even though the general population may contain a high number of Hispanics, seldom are they judged by their peers.

Hispanics have special difficulty with a court system that is conducted in English, when most of the Hispanic defendants have limited knowledge of English. In a study conducted in New York City in the 1970s, between one-third and one-fourth of the defendants said they needed an interpreter in court, had doubtful ability to communicate in English and did not understand the charges brought against them.[76] Hispanics still are underrepresented in the legal professions. The issue remains not how far Hispanics have come but how far they still have to go before they are equitably represented in the criminal justice system.

Although the situation is marginally better than a decade ago, the summary of the 1970 U.S. Commission on Civil Rights report--Mexican Americans and the Administration of Justice in the Southwest--still has the ring of reality:

> Mexican Americans are distrustful of the courts and believe them to be insensitive to Mexican-American background and culture . . . they view the law as an instrument to create and perpetuate injustice, rather than as an instrument to solve their problems.[80]

Testifying before a California State Assembly Committee, the chair of the State Advisory Committee to the U.S. Civil Rights Commission said:

> I don't believe any of you here would be willing to be tried by 12 people that don't understand you; that can't speak your language; can't understand what you say. Yet we do that every day in the courtrooms here.[77]

The complaints of Hispanics go even beyond these "structural" problems of class, language and cultural differences. These complaints, and some corroborating evidence, suggest discrimination by the courts, especially when the courts have great discretion in arraignment or sentencing. Five years ago in New York City, Hispanics received higher bail assessments compared to whites facing similar charges; of those who pleaded guilty, Hispanic defendants were fined more than non-Hispanic defendants; sentencing of Hispanic defendants resulted in longer terms than those for other defendants. Finally, although more Hispanics than persons of other races met formal criteria as qualifying for release on one's own recognizance (ROR), fewer Hispanics were actually recommended for ROR.[78]

There have been some improvements for Hispanics in the courts over the last decade. Largely as a result of the Civil Rights Movement and affirmative action policies in universities, there was a significant jump in the number of Hispanics graduating from law schools, though the percentages of the total student population in law schools is statistically insignificant. A recent decision by the American Bar Association's House of Delegates requiring law schools to "demonstrate . . . by concrete action" a commitment to ethnic groups that have been victims of discrimination, or else face the loss of accreditation[79] should substantially counteract the impact of the 1978 Bakke decision. Nonetheless, the situation parallels employment trends among police departments--Hispanics still are woefully underrepresented in legal professions.

5. Illegal Aliens, Undocumented Workers, and Immigration Law

The issues related to illegal aliens, undocumented workers and immigration law are profound for Hispanics. The communities are torn between their love for those of similar cultures and backgrounds and their desire to protect what small gains they have made in their relationship with the dominant society. Profound tension exists between traditional Hispanic cultural influences and the effects of assimilation into the American society. These issues are persistent and need to be addressed, since much of their resolution involves the criminal justice systems of the various states and of the nation. In general, the subissues surrounding the larger topic of illegal aliens and undocumented workers are identity of the group, due process in the courts, the nature of immigration laws, and the impact of these individuals and groups on the economic and social welfare of the various communities in which they are a part.

While the Spanish-speaking constitute the bulk of the undocumented workers in the United States, it is a mistake to conclude that all Hispanic illegals are from Mexico. As Judge Armendariz stated before a major conference on Law Enforcement and Criminal Justice:

> Just recently, my docket for deportation proceedings in El Paso, Texas, contained 80% Central and South American respondents to deportation charges. The influx of this segment of the South American population as illegals is obviously on the rise. This is a phenomenon with little, if any, reliable statistical data in which the need for research and analytical assessment abounds. Every Hispanic who is here by virtue of U.S. citizenship or U.S. resident status is affected in his daily life by constant and uncontrolled addition to our numbers

within the United States.[81]

Thus, in the absence of reliable information about who is coming to the United States via illegal means and what their impact is or might be on the various communities in which they reside, the welfare of all Hispanics is affected. In many instances, the action of immigration agents on the local Hispanic communities may be likened to the action of slave hunters on the free black communities during the antebellum period of the United States. Though free blacks thought that their residency status granted them some immunities from invasion of privacy, in fact, this was not the case. Native-born Hispanics and legal U.S. residents of Hispanic origin often have to prove to immigration agents that they have a right to be where they are, when they are mistaken for an illegal alien or undocumented worker.

This subissue of definition of status and rights of the individual is related directly to the subissue of "due process." When arrested by an immigration or other law enforcement official, the person involved, whether rightly or wrongly detained, often finds himself or herself in a "Catch 22" situation.[82] He or she is often held though no criminal charge has been filed or is pending, yet he or she cannot and will not be released, because the nature of the offense "has yet to be determined."[83] The result is that detention periods can and do run from one month to a year, in spite of requirements that there be biweekly reporting stating the reasons why a person should not be released.[84] In other related matters, individuals who are detained, when suspected of being illegal aliens or undocumented workers, are not released on bail, because the usual determination is that the individual is a poor bail risk.[85] Advisement on the right of counsel is general, given under psychologically coercive conditions and in a misleading fashion, so that the individual is virtually denied any meaningful choice in the handling of his or her affairs.[86]

What options are available to the Hispanic community? Unfortunately, they are very few. The nature of immigration law is complex and highly political. As pointed out in the preceding historical section, the various waves of immigration of Hispanics to the United States have usually been related to economic need. When the country has had a need for cheap labor, laws have been passed to facilitate that need; however, when economic times have been hard, local communities have pressed local politicians to alter the laws on the pretext that the presence of illegals created a hardship on the local communities.

The evidence that the illegals create hardships is mixed. For example, employers who have hired illegals and undocumented workers tend to be those who claim that their profit margin is slim and that it is difficult to recruit and retain a stable labor force. This is the case for those who own small businesses, especially in the textile and fashion industry; farmers who produce seasonal crops; and those in the service sector such as restaurants and other food establishments. They also claim that most Americans do not want these types of jobs, although these services are essential to the economy. Illegals and undocumented workers are hired, they argue, because they fill a manpower need.

Workers, and especially unions, claim that this is not the case. They argue that employers use undocumented workers to keep labor costs down and to increase their own profits. They counter that such categories of work could be made desirable if the employers were willing to pay a living wage to their regular employees. Unfortunately, the controversy is fraught with emotionalism, with neither side presenting substantial facts to support its claims. The result is that the picture that is held up to the American public is one of Hispanic illegals replacing Americans who want to work. This picture has developed into a stereotype that is very strong in the minds of most Americans.

The options available for the Hispanic communities are few, given the political nature of the debate regarding illegal aliens and undocumented workers. Until such time as there are verifiable statistical data regarding the profile of this population and their impact on the economic and social welfare of the American community in general, the topic will continue to be an emotional issue. However, any debate on the issue must begin with a careful look at the complicated immigration laws and the racist nature of these laws. Only then can Hispanic communities hope to achieve fairness and due process for themselves and citizens and for those who desire to become citizens.

E. Conclusion

What does it mean to be of Hispanic origin and to be a citizen of the United States? The response to this question, of necessity, is a complex one. As stated at the beginning of this chapter, social science research has yet to come to grips with this basic question. Reasons for the failure to do so are myriad, the most obvious of which are the absence of conceptual frameworks which might explain the varieties of experiences and the absence of strong statistical data related to definition of the population and subpopulations.

Another issue related to the response to this question is that posed by the mixed histories of the various Hispanic subgroups. While the experience of most of the various

Hispanic groups has been one that is characterized by its immigrant nature, increasingly the experience of various Hispanic subgroups is being characterized by the nature of political exile and flight from the various homelands. Once in the United States, most Hispanics, whether immigrant or refugee, must deal immediately with the twin problems of race and language. The various strategies which have been devised by the communities to deal with these phenomena are still to be understood or even developed.

The issues of race and language affect the participation of Hispanics in the criminal justice system. They are exacerbated by economics. The low economic status of most Hispanics affects their ability to qualify for bail and to have legal counsel that is competent, committed, and capable of understanding their problems as they present them. Their low economic status is usually coupled with low educational status, which in turn affects the ability of the communities to speak for themselves and to acquire the political power necessary to bring attention to the nature of their condition in the various communities of the United States.

Finally, to be Hispanic and an American is no guarantee that one's rights to privacy and rights to due process will be respected. In the emotionally charged atmosphere and debate surrounding the topic of illegal aliens and undocumented workers, there is an absence of strong statistical data which accurately profiles the population involved, there is an absence of attention to the racist nature of immigration laws, and little attention has been paid to the complexities of these laws which render any logical and sane resolution of the many cases which must be addressed on a daily basis.

In short, Hispanics as a group live with a persistent and nagging dilemma; they are victimized by racism in its many forms--laws, structures, and systems. To wage war against these forms means to risk being labeled as deviant, immoral, and destructive. Yet the failure to wage war against the insidious system that oppresses them means that they themselves allow the oppression to continue. This is the sum total of the response to the query of the duality of being Hispanic and American, and it is a condition which can begin to be alleviated with the reduction in the unequal nature of the current justice system.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Fresno, California, October 29, 1977.

2. Peter L. Sissons, The Hispanic Experience of Criminal Justice (New York: Hispanic Research center, Fordham University, 1979), p. 13.

3. Ibid., p. 1.

4. Ibid., p. 2.

5. Ibid., p. 4.

6. Ibid., p. 5.

7. See chapter, "Hispanics," The Harvard Encyclopedia of American Ethnic Groups, Stephan Therstrom et al. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980, p. 462.

8. Ann Orlov and Reed Ueda, "Central and South Americans," The Harvard Encyclopedia of American Ethnic Groups, Stephan Thernstrom et al., eds., pp. 210-217.

9. Carlos E. Cortes, "Mexican Americans," The Harvard Encyclopedia of American Ethnic Groups, ed. Stephan Thernstrom et al., eds. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980), pp. 697-719.

10. Joseph P. Fitzpatrick, "Puerto Ricans," The Harvard Encyclopedia of American Ethnic Groups, Stephan Thernstrom, et al., eds. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980), pp. 859-867.

11. Lisandro Perez, "Cubans," The Harvard Encyclopedia of American Ethnic Groups, Stephan Thernstrom, et al., eds. (Cambridge, Mass.: The Belknap Press of the Harvard University Press, 1980), pp. 256-261.

12. Though recent data are not available, information provided for this section was made available by Mr. Guarione M. Diaz, a member of the National Minority Advisory Council on Criminal Justice, Executive Director of the Cuban National Planning Concil, Miami, Florida.

13. Jerry Mandel, "Crime and the Hispanic Community," a paper presented at the National Council of the La Raza Symposium: Crimen y Justicia (Crime and Justice for Hispanics), Racine, Wisconsin, June 28-30, 1979.

14. Ibid.

15. Op. cit., Sissons, p. 16.

16. Ibid., p. 18.

17. Ibid., p. 39.

18. Ibid., p. 32.

19. This information was provided by Mr. GBuarione M. Diaz, See note 12.

20. Enrique H. Pena, "The Economically Disadvantaged (Hispanic Youth in the Juvenile Justice System)," a paper prepared for the National Hispanic Conference on Law Enforcement and Criminal Justice, Washington, D.C., July 28-30, 1980, p. 3.

21. Op. cit., Sisson, p. 26.

22. Ibid., p. 28.

23. Op. cit., Pena, p. 8.

24. Bureau of Justice Statistics, U.S. Department of Justice, "The Hispanic Victim," National Crime Survey Report, June 1980, p. 1.

25. Ibid., p. 2.

26. Ibid., p. 2.

27. Ibid., p. 3.

28. Robert Lamb, Jr., statement at hearings of National Minority Advisory Council on Criminal Justice.

29. Gilbert G. Pompa, "An Overview of Hispanic Concerns With the Criminal Justice Process," a speech before the National Hispanic Conference on Law Enforcement and Criminal Justice, sponsored by the Law Enforcement Assistance Administration, Washington, D.C., July 28, 1980. Mr. Pompa is Director of the Community Relations Service, U.S. Department of Jsustice.

30. Refugio Garcia, statement of hearings of National Minority Advisory Council on Criminal Justice, and Percy Duran, statement at California Assembly Select Committee on the Administration of Justice, "Relations Between the Police and Mexican-Americans," Part 3, April 28, 1972.

31. Carey McWilliams, *North From Mexico: The Spanish-Speaking Peoples of the United States* (New York: Greenwood Press, N.Y., 1968) McWilliams does not date King Fisher's statement.

32. Ibid.

33. Ibid.

34. *Time*, June 21, 1943.

35. Guy Endore "Justice for Salcido," Civil Rights Congress of Los Angeles, 1948, (reprinted in *The Mexican American and the Law*, (New York: Arno Press, N.Y., 1948).

36. U.S. Commission on Civil Rights, *The Mexican-American* (Washington, D.C.: U.S. Government Printing Office, 1968).

37. Ibid.

38. Percy Duran, statement at California Assembly Select Committee On The Administration of Justice, "Relations Between the Police and Mexican-Americans," Part 3, April 28, 1972.

39. Gilbert Pompa, comments at the Tenth Annual Conference of the National Association of Police-Community Relations Officers, cited in the *Law Enforcement Assistance Administration Newsletter* (June/July 1979).

40. Op. cit., *The Mexican American*, see note. 35.

41. Op. cit., Robert Lamb, Jr., see note 27.

42. Armando Morales, *Ando Sangrando--I Are Bleeding: A Study of Mexican American-Police Conflict* Perspectiva Publications (La Puente, California, 1972).

43. Ibid.

44. Judge Ben Roybal, personal interview with National Council of La Raza, Police Use of Deadly Force, research project, 1980.

45. PRC Metronamics, Feasibility Study for a Bilingual and Decentralized Court Arraignment Process, for the Law Enforcement Assistance Administration, Contract J-LEAA-023-75, 1976.

46. Ibid.

47. Op. cit., Gilbert Pompa, see note 28.

48. Ruben Sandoval and Douglas Martinez, "Police Brutality--The New Epidemic," Agenda (Magazine of the National Council of La Raza), Sept/Oct 1978.

49. Ibid.

50. U.S. Commission on Civil Rights, Mexican Americans and the Administration of Justice in the Southwest (Washington, D.C.: U.S. Government Printing Office, 1970).

51. John Carro, "Impact of the Criminal Justice System on Hispanics," a speech prepared for the National Hispanic Conference on Law Enforcement and Criminal Justice, sponsored by the Law Enforcement Assistance Administration, Washington, D.C., July 28-30, 1980. Judge Carro is Associate Judge, Appellate Division, Supreme Court, State of New York, First Judicial Department.

52. Op. cit., Pompa, see note 28.

53. James Fyfe, Study of N.Y.C. Police Shootings, 1971-75, cited by Community Relations Service, list of statements compiled for its consultation on Police Use of Deadly Force, 1979.

54. Los Angeles Board of Police Commissioners, Study of Deadly Force, Part IV, "Officers Involved in Shootings", 1980.

55. Op. cit., Carro, see note 10.

56. Op. cit., Carro, see note 50.

57. Ibid.

58. Ibid.

59. Ibid.

60. Benjamin Aranda III, Statement of hearings of National Minority Advisory Council on Criminal Justice, Los Angeles, California, November 7, 1977. Mr. Aranda is president of the Mexican-American Bar Association.

61. Texas Advisory Committee to the U.S. Commission on Civil Rights, Texas: The State of Civil Rights--Ten Years Later, 1968-78.

62. U.S. Department of Justice, Justice Management Division, Department of Justice Employment Fact book for January 1-June 30, 1979 (Washington, D.C., 1980).

63. Ibid.

64. Op. cit., Texas Advisory Committee, see note 60.

65. Op. cit., Carro, see note 50.

66. Dallas Area Criminal Justice Council, 1979; Metropolitan Justice Plan, 1977.

67. Data provided by the Los Angeles Police Department.

68. Elizabeth Perez-Luna, "Watching the Letter of the Law," Nuestro, March 1980.

69. Fernando Hernandez, "The Chicano Cop," el Universal (Denver), September 18, 1980.

70. Ibid.

71. Op. cit., Sisson, pp. 34.

72. Ibid., p. 6.

73. Op. cit., Carro, see note 50.

74. Ibid.

75. Ibid.

76. Op. cit., PRC Metronamics, see note 44.

77. Ibid.

78. Ibid.

79. Jim Mann, "Law Schools Must Adopt Minority Plans, ABA says," Los Angeles Times, August 6, 1980.

80. Op. cit., U.S. Commission on Civil Rights, see note 49.

81. Albert Armendariz, Sr., "The Transition From Undocumented Worker to Documented by Way of the Judiciary," a speech prepared for the National Hispanic Conference on Law Enforcement and Criminal Justice, sponsored by the

Law Enforcement Assistannce Administration, July 28-30, 1980, Washington, D.C. Mr. Armendariz is a U.S. Immigration Judge stationed in El Paso, Texas.

82. Linda Reyna Yanez, "The Alien Material Witness and the Law," a speech prepared for the National Hispanic Conference on Law Enforcement Assistance Administration, July 28-30, 1980, Washington, D.C. Ms. Yanez is a lawyer with the Texas Rural Legal Aid, Brownsville, Texas.

83. Ibid.

84. Ibid.

85. Ibid.

86. Ibid.

APPENDIX

Chapter II: Impact of Crime and Criminal Justice on Hispanic-Americans (Relevant Tables)

Table II-8: People of Puerto Rican Origin in Continental U.S. and New York City, 1910-1970

Table II-9: Percentage of Foreign-born Spanish-origin, 12th Year of School or Higher Completed, 1970

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Table II-12: Central and South Americans in the United States

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Table II-8

People of Puerto Rican Origin in Continental United States and New York City, 1910-1970

Generation and Year of Birth	U.S. Total	N.Y.C. Total	Percent U.S. Total in N.Y.C.
First and second			
1910	1,513	554	36.6
1930	52,774	--	--
1940	69,967	61,462	87.8
1950	301,375	245,880	81.6
1960	887,662	612,574	69.0
1970	1,391,463	817,712	54.8
First			
1910	1,513	554	36.6
1930	52,774	--	--
1940	69,967	61,463	87.8
1950	226,110	187,420	82.9
1960	615,384	429,710	69.8
1970	810,087	473,300	58.4
Second			
1950	72,265	58,460	77.7
1960	272,278	182,964	67.2
1970	581,376	344,412	59.2

Source: U.S. Bureau of the Census, Census of the Population, 1970, Subject Report PC(2)-1E, Puerto Ricans in the United States (Washington, D.C., 1973), table 1; U.S. Bureau of the Census, Census of the Population, 1970, Subject Report PC(2)-1D, Puerto Ricans in the United States, Final Report (Washington, D.C., 1963), p. viii, Table A.

Table II-9

Percentage of Foreign-born Spanish-origin 12th Year of School or Higher Completed, 1970

	Age	Mexican	Puerto Rican[a]	Cuban	Central and South American
Men	20-24	38.3	37.1	70.3	65.7
	25-29	27.9	29.2	66.2>	65.5
	30-34	21.9	23.0	47.7>	
	35-44	15.3	21.5	45.3	64.1
	45-54	17.1	19.1	46.7	56.9
	55+	9.1	11.7	40.9	42.5
Women	20-24	32.1	37.1	65.5	40.9
	25-29	26.0	28.8	57.9>	60.5
	30-34	19.4	23.1	43.4>	
	35-44	16.7	19.4	46.4	55.0
	45-54	15.7	14.7	42.3	49.3
	55+	8.6	9.8	24.9	36.3

[a] Island-born Puerto Ricans.

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States—Changing Demographic Characteristics (New York, 1976), pp. 382-387.

Table II-10

Native-born Persons of Spanish Origin Who Have Completed 12th Year or Higher of School, 1970 (in percentages)

	Age	Mexican	Hispano[a]	Puerto Rican[b]	Cuban	Central and South American	Non-Spanish White
Men	20-24	56.0	68.1	58.8	81.8	83.1	82.0
	25-29	49.8	61.5	54.3	77.3>		77.8
	30-34	40.7	55.9	55.4	68.4>	76.3	72.9
	35-44	30.2	43.9	45.9	66.7	72.0	64.7
	45-54	20.1	39.5	34.7	44.2	65.6	56.3
	55+	8.8	19.4	11.8	14.5	57.8	33.7
Women	20-24	53.3	66.8	64.3	81.2	83.9	82.4
	25-29	45.1	56.6	53.9	74.5>		77.6
	30-34	38.2	50.7	52.0	65.8>	77.4	73.2
	35-44	25.0	40.2	46.5	60.2	76.0	67.3
	45-54	16.2	32.7	36.4	39.6	53.4	59.3
	55+	9.3	23.2	15.8	20.3	51.2	37.4

[a] Hispanos are native Americans, most of whose ancestors have been in the United States for a number of generations.

[b] Puerto Ricans born in the mainland United States.

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States--Changing Demographic Characteristics (New York, 1976), pp. 382-387.

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Table II-11

Spanish-origin Persons, 16 Years of Age and Over, by Broad Occupational Groups, 1970 (in percentages)

	Occupation	Mexican	Hispano	Puerto Rican	Cuban	Central and South American	Non-Spanish White
Men	White-collar	18.6	30.5	23.2	37.4	40.4	42.7
	upper	9.6	16.5	8.8	20.6	24.5	27.4
	lower	9.0	14.0	14.4	16.8	15.9	15.3
	Craftsmen	20.5	21.9	15.5	18.0	18.9	21.7
	All other	60.9	47.6	61.4	44.5	40.8	65.4
Women	White-collar	39.6	53.7	42.9	41.5	45.4	65.4
	upper	8.5	13.7	8.9	10.9	12.6	20.5
	lower	31.1	40.0	34.0	30.6	32.8	44.9
	Craftsmen	2.4	1.6	2.4	2.6	2.1	1.9
	All other	58.0	44.8	54.7	56.0	52.4	32.8

Source: A.J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States--Changing Demographic Characteristics (New York, 1976), pp. 66.

Table II-12

Central and South Americans in the United States

Country	Arrivals 1967-1976	1970 Census		1976 Alien Registration
		Total	White	
Central America				
Costa Rica	12,093	25,840	21,645	14,454
El Salvador	19,665	23,502	22,970	22,827
Guatemala	19,683	26,865	25,394	20,196
Honduras	13,604	31,150	23,020	16,039
Belize (British Honduras)	-0-	14,221	7,561	-0-
Nicaragua	45	28,620	27,104	13,439
Panama	16,963	38,196	19,807	14,596
Other	-0-	-0-	-0-	1,529
Total	89,463	188,394	147,501	103,080
South America				
Argentina	26,221	67,364	66,874	29,970
Brazil	15,035	46,758	45,561	18,905
Chile	10,552	25,125	24,512	13,065
Colombia	62,135	84,921	82,505	67,627
Ecuador	44,489	49,491	47,287	43,967
Guyana	24,200	-0-	-0-	11,706
Peru	16,981	35,450	33,488	20,638
Paraguay	-0-	-0-	-0-	1,241
Uruguay	6,314	7,041	6,928	4,996
Surinam	-0-	-0-	-0-	230
French Guiana	-0-	-0-	-0-	-0-
Bolivia	-0-	10,187	9,916	5,068
Venezuela	5,868	17,321	16,292	11,641
Other	7,222	45,806	30,641	2,403
Total	218,987	389,464	364,004	23,457

Source: U.S. Immigration and Naturalization Service, Annual Report, 1976 (Washington, D.C., 1977), pp 89, 142: U.S. Bureau of the Census, Census of the Population, 1970, vol. 1, Characteristics of the Population, pt. 1, U.S. Summary (Washington, D.C., 1973:, I, p. 598, Table 192.

Table II-13

Median Earnings (in dollars) by Years of Schooling and Sex of Spanish-origin Groups, 1969

Country	Schooling (years)	Mexican	Hispano	Puerto Rican	Cuban	Central and South American	Non-Spanish White
Men	Under 12	4,460	4,940	5,080	4,980	5,050	5,850
	12	6,070	6,610	5,960	5,810	6,530	7,730
	13-15	6,310	6,380	5,920	6,640	6,630	7,920
	16+	8,990	9,620	9,820	8,590	10,360	11,620
	Total	4,970	5,800	5,430	5,710	6,140	7,290
Woman	Under 12	1,670	1,600	3,170	2,920	3,090	2,230
	12	2,930	2,950	3,880	3,470	3,960	3,400
	13-15	2,940	2,820	4,060	3,570	3,600	2,870
	16+	5,590	5,710	6,090	4,550	4,660	6,000
	Total	2,100	2,350	3,420	3,260	3,470	3,090

Source: A. J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States-Changing Demographic Characteristics (New York, 1976), p. 64.

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Table II-14

Number of Earners Per Spanish-origin Family, 1970, in Percentages; Median Income of Spanish-origin Families (1969)

Earners	Mexican	Hispano	Puerto Rican	Cuban	Central and South American	Non-Spanish White
0	7.7	8.9	20.7	6.0	6.3	8.7
1	41.4	42.3	43.1	33.0	39.5	40.3
2 or more	50.9	48.4	36.2	61.0	54.2	51.0
Median income	$6,960	$7,860	$6,230	$8,690	$8,920	$10,100

Source: A. J. Jaffe, Ruth M. Cullen, and Thomas D. Boswell, Spanish Americans in the United States-Changing Demographic Characteristics (New York, 1976), p. 60, 421

CHAPTER III

IMPACT OF CRIME AND CRIMINAL JUSTICE ON AMERICAN INDIANS

> The tribal chairman sent me here not to talk about treaty violations, not to talk about hundreds of years of discrimination and not to talk about our terrible economic situation...but about what's happening now on our reservation. We need people, we need training, we need to directly address the problems of alcoholism, lack of facilities for juveniles and lack of sufficient numbers of police to enable them to do their job.[1]

A. Introduction

Crime and the criminal justice system as they relate to American Indians in the United States cannot be understood without some knowledge of the history of the political relationships between and among the various Indian nations and the federal and state governments. These political relationships have led to the expropriation of Indian tribal lands, the isolation of Indian nations from other American people and other Indian nations, and a mixed history of attempts to enforce assimilation between the Indian nations and Americans of European ancestry.

The critique offered in this chapter is based on the assumption that, given their strong traditional and cultural ties, American Indian peoples can survive in the U.S. pluralistic society while retaining their national identity. As the indigenous people of the United States and North American continent, American Indian peoples especially should be free to retain their traditional cultural identity. Much of this identity is contingent on the recognition and support of separate and autonomous tribal government and criminal justice systems.

To support the recommendations offered later in this report, this chapter examines three aspects of American Indian relationships with crime and the criminal justice system: (1) traditional legal and criminal justice systems of Indian nations, (2) statistics and reports demonstrating the discriminatory and selective treatment of American Indians within the American criminal justice system, and (3) tribal criminal justice systems.

The situation of the indigenous people of the United States relative to the criminal justice system defies description. For those who do not understand the historical development of the North American Indian people in the post-Columbian era, the Indian situation is a hopeless tangle of myth and reality, fact and fiction, incomprehensible problems. For those who do know, often through bitter experience, what happens in Indian country, frustration, bitterness, and, from time-to-time, rage characterize their attitudes.

Criminal justice professionals, Indian and non-Indian alike, are caught in a system of conflicting and unworkable policies, a mountain of legal and statutory ambiguities, uncaring bureaucracies, and economic, social, and cultural factors which are so intertwined with the causes of crime (as well as the consequences) that they feel overwhelmed and powerless. At a Council public hearing, a legal aid attorney working with Navaho people in Arizona told of a judge who refused to appoint attorneys for indigent Navahos arrested in the town, a violation of their constitutional rights, because he felt it was "up to the Navaho tribe" to supply attorneys. Some judges do not appoint interpreters for Indians unless their English skills are so lacking they cannot even get them to say "Yes" on a guilty plea form.[2] The story told over and over again was one of racism, discrimination, neglect, and injustice.

But what of Indians who leave the reservation for the economic opportunities of the cities? In the words of one urban Indian, "People from many different tribes have been dumped together in these ghettos, ill-equipped to even understand the complex makeup of the cities in which we now live."[3]

A study of the number of Indians who are incarcerated in Minnesota prisons showed that 61 percent resided in the metropolitan area, while only 24 percent live in rural areas. Cut off from their tribes, denied assistance available to Indians on reservations, Indians in dozens of major cities across the nation have become significant statistics in the criminal justice system, often becoming the minority group on the lowest rung of the social ladder, the least understood, the group whose problems most defy analysis, let alone solution.

There is a third group of Indians, those who do not live within the boundaries of closed reservations (reservations where the tribe exercises criminal and civil jurisdiction) or in urban areas. Typically, these people live in reservation areas where the powers of the tribe to govern itself have been all but extinguished. Control over most of this land has passed into non-Indian hands via the Indian Allotment Act or some other means, and the state exercises criminal and civil jurisdiction, mainly through county sheriffs and county court systems. Whites control the economic base of the area, and through that, they control the other major spheres of influence.

B. Problems

The Council held public hearings in three areas with large Indian populations, including South Dakota, Oklahoma and Arizona. More than 125,000 Indians in Oklahoma, the old Indian Territory, live in a situation in which reservation boundaries were eliminated and land opened to white settlement under the Allotment Act, and it was here that some of the most disturbing testimony was gathered by the Council.

Many witnesses talked about the overwhelming overrepresentation of Indians in the arrest statistics and in prison populations. The prevalence of discriminatory or unconstitutional practices that adversely affect American Indians almost daily was affirmed repeatedly.

Perhaps the most damaging allegations surround the issue of Indians who are arrested on drunk charges by small-town police. Several witnesses complained about the practice, but one young Indian law student was particularly moving. She said, in part, "I wasn't going to testify. But . . . people [were] talking about some things that have gone on in the Western district of Oklahoma. I was born and raised in that district, and I'm currently a second year law student . . . ." She continued:

> When I went to law school, I thought I was studying about laws from a foreign country, because none of the laws I read about existed where I come from. (Laws safeguarding constitutional rights.) The winos in Clinton [Oklahoma] are picked up continually. The city cops would drive down the street and point to any one of the winos sitting on the street and say, "Come on." They'll get in the car and they'll go, and five minutes later they'll be cleaning up the fire trucks or the police cars.
>
> This practice has been going on so long there is evidence that the police in Clinton have a record of these people, where their finances are coming from. Some of these winos are old men who have land [and who] are receiving lease checks . . . . The police have a record [of] when these checks are going to come in . . . . One or two days before these checks are going to come in, they'll pick up these people and give instructions to pass on to other people to pick up their checks, cash it, and come and get them out of jail.[4]

There was extensive testimony before the Council alleging that, when there were public works projects to be done, indigent Indians were picked up in large numbers, given stiff fines, and if they couldn't pay, ordered to work off the fines at so much a day.

Other people had talked about police setting up roadblocks outside of Indian gatherings and stopping everyone, checking their licenses, identification cards and cars. The law student continued:

> The Cheyenne Arapahoe Labor Day powwow is on tribal land, but the Oklahoma Highway Patrol is always there. One incident was when an older couple in their mid-eighties were stopped by the police, and were asked to get out of the car. After that the police shined the flashlight inside the car, hunting for booze or something.
>
> The mentality that has developed among most of the Indian people in Oklahoma is 'once you're picked up by the police, you're automatically guilty. No one ever thought of going to jail and pleading not guilty.
>
> All this week we were attending arraignments which were held in Anadarko during the American Indian Exposition. All five days that I was there, all I saw in that courtroom was minority people, blacks, Chicanos and Indians . . . . All the minorties plead guilty to whatever charge was brought against them.[5]

In Sioux Falls, South Dakota, many Indian and non-Indian witnesses testified on the severe and extremely brutal treatment experienced by Indians from elements of the criminal justice system.

The Council was told of policemen who identify Indians with long hair as members of the American Indian Movement (AIM) and subject them to harrassment, including shooting into their houses; of the FBI's complicity with local officials to deprive Indians of just treatment and their constitutional rights; and of whites who commit crimes against Indians receiving no punishment. As one witness, Mr. Young Bear, put it, "I think they can do whatever they want to do. When it's a white man that has committed a crime, then it's put off on a shelf someplace. But when it's an Indian, it kind of gets immediate attention."[6]

Witnesses told the Council of how guards handcuffed Indian prisoners and beat them; Indians who are sent to solitary confinement in prisons, "the hole" which is kept below 45 degrees, were chained and given no blankets. In these places no toilet facilities are provided. The Council heard of the cases of Vincent Bad Heart and Jerry Vassar and numerous others who received absolutely inhumane treatment, including beatings by prison personnel and denial of medical attention for days, though suffering from stab wounds.

The Council heard of the practice of disparate sentences between Indians and whites in the region; of the difficulties that families and friends and even lawyers and priests have who attempt to see Indian prisoners; of Indians being denied the right to practice their native religions; of the language difficulties faced by the Indian in understanding court proceedings. Testimony revealed that Indians, forced by dire poverty to migrate, under Bureau of Indian Affairs prodding, were dumped into urban centers without any support into social conditions practically as severe as on the reservation.

Given the history of insensitive, inept and criminally negligent policies of the government toward American Indian people to this day, few with any conscience could fail to sympathize with the opening lines of the Preamble for the Declaration of Continuing Independence by the first International Treaty Council:

> The United States of America has continuously violated the independent Native Peoples of this continent by executive action, legislative fiat, and judicial decision. By its actions, the United States has denied all Native People their international treaty rights, treaty lands, and basic human rights of freedom and sovereignty. This same United States Government, which fought to throw off the yoke of oppression and gain its independence, has now reversed its role and become the oppressor of sovereign Native Peoples.[7]

C. Historical Evolution: Traditional Systems of Law and Order

Long before intruding Europeans reached America, Indian nations had established their own laws and methods of law enforcement. The Indian system of oral traditions was quite different from the written documents of the European legal system, but the intent and effects were the same. Both were methods of maintaining order devised by a sovereign nation.

In reviewing the Indian criminal justice system, before the interference by white culture, it is important to remember two things. First, Indian nations were and are sovereign, and from their sovereignty comes the inherent power to enforce their own laws (although Supreme Court decisions have held that the sovereignty and inherent power have been diminished and are limited). Second, Indian nations vary in their traditions and customs. No two tribes are structured exactly alike. However, it is possible to observe general patterns and practices among Indian nations while still recognizing the uniqueness of each individual nation.

Throughout the ages a complex and integrated system governed relations among Indians. One such system of laws was embodied in a constitution known as the Great Binding Law of the Five Nations. This document, adopted by Indian nations long before white men reached America's shores, "established the democratic principles of initiative, recall, referendum, and equal suffrage . . . ."[8] This tradition of an ordered, rule-oriented society reached its height in the administration of criminal justice. A system of justice within each tribe was established to maintain social order, to protect the tribe's food source, and to defend it against aggression. The number of punishable offenses against the tribe were few, generally corresponding to European felonies. An early author on the subject noted, "The list of crimes. . .was by no means such an extended category as that amongst white people, and strange as it may seem, the evidence indicates that vice and crime were not as prevalent amongst the savages as amongst the civilized people."[9]

The basis of the Indian justice system was a strong sense of community. Tenets of Indian religion and culture so infused tribal life that instances of violations against tribal codes were rare. Each member of the tribe was important to the group's survival, in contrast to a capitalistic system with its "necessary" high-level of unemployment. The individual recognized his dependence on the community while simultaneously comprehending his own worth to the tribe. An illustration of this interdependence can be seen in the case of Sticks Everything Under His Belt, the Cheyenne Indian, who had announced that the rules against individual hunting did not apply to him because he was declaring himself independent of the tribe, a man on his own. Because the hunting discipline was so important for tribal survival, it was determined by the tribal authorities that Sticks Everything Under His Belt would be banned forever from the tribe.[10] The tribal authorities realized that an "each man for himself" ethic ultimately meant destruction of the tribe.

Behavior in Indian societies was not governed by published statutes. Rather, oral traditions communicated acceptable behavior patterns, while a fear of gossip, revenge, or retaliatory witchcraft encouraged adherence to societal standards.[12] Ridicule was also a means of public restraint or punishment. An offender might be made to wear the opposite sex's clothing while sitting in public view or be made the butt of jokes at tribal ceremonies.[13] The most severe punishment for violation of a tribal law was banishment.[14] With such strong internal restraints, harsh external punishments such as imprisonment or corporal punishment were seldom necessary.

Often, the offender's family was involved in the process of making reparations for his crime. Because of the intimacy of tribal life, the entire community was aware of each member's actions. Acts detrimental to group survival, such as selfishness or treachery, could turn the whole community against the wrongdoer and his kin. Therefore, the family attempted to rehabilitate the offender, or at least offered compensation to whoever was wronged.[15]

The family of the victim also played an important part in the carriage of justice. The Seneca tribe allowed the family of a murder victim to kill the murderer without fear of retaliation from the murderer's family (provided there existed an agreement of his guilt). But most often, a murderer would admit that he had erred and offered his services or possessions to the victim's family. They, in turn, were expected to accept the conciliatory act and to consider the matter closed.[16] Emphasis was always placed on making amends to the victim's family rather than punishing the murderer.

Many tribes had highly developed legal systems for the processing of crimes. The Cheyenne desingated a Council of Chiefs to determine the internal juristic norms of the tribe and to preside over legal matters of primary importance. The Cheyenne Soldier Society exercised judicial power over criminal and civil proceedings, except homicide and domestic relations. To prevent a concentration of power, no individual was allowed to serve on both councils.[17] Soldier societies were common to many tribes who performed the duties that white society distributes among police, prosecutors, judges and penal authorities. The Menominees, and other central Algonquian peoples, developed formal three-party judicial procedures for the prosecution of crimes. A member of the police society served as an investigator and prosecutor, while the pipeholder, who was also a warrior chief, acted as defense attorney. Trials were attended by a "police go-between," who acted as a mediator in negotiating a settlement between the accused and the offended parties.[18]

It was difficult for the Europeans coming to America to understand Indian concepts of crime and punishment.[19] The colonial view that Indians were men without laws or had not advanced to a state of civilization in which they needed laws set the foundation for attitudes that are still held today. The United States' behavior reflected the belief that Indian tribes were unsophisticated and inferior, as well as dangerous. After adoption of the Constitution, Congress, on August 7, 1789, established the War Department and placed Indian affairs under its control. Indian nations that once had unlimited control over their domestic and international affairs were declared to be "domestic dependent nations"[20] under the exclusive jurisdiction of the federal government and were limited to regulation of their internal affairs. As the U.S. government grew stronger, it expanded its regulatory role over Indian nations,[21] causing disruption and destruction of the tribal legal systems. The tribes were left with little or no protection from criminal violations by non-Indians and a growing disbelief that any part of the white man's legal system would provide the needed protection.

Tribal police forces supported by the federal government were initiated under President Grant's Peace Policy of 1869. Grant's policy called for Indian disputes to be handled on an individual basis by the federal government rather than by the Indian governments. Indian agents who once had the role of international ambassadors to the Indian nations became colonial governors over the domestic affairs of the Indian nations.

By 1877, many Indian nations had been so thoroughly dispossessed of their lands and their heritage, with attending stress placed on the fabric of their society, that traditional law and order systems began to break down.[22] Congress began appropriating funds for Indian police in 1879. Indian nations, which for centuries had had no need for jails or law enforcement officers from outside the tribe, were now being patrolled by forces commanded by white leaders. Some tribes, such as the Pine Ridge Sioux, realized that a police force controlled by federal government agents posed a threat to their tribal authority.[23] Although traditional leaders did not want the federal Indian police on their reservations, they recognized the federal Indian police as a lesser evil than federal military troops.[24]

Attempting to apply white solutions to Indian problems, the United Stats' Indian policy has most often been an effort to assimilate Indians into white society rather than to preserve Indian autonomy.[25] Although the Supreme Court held in ex parte Crow Dog[26] in 1883 that the United States had no jurisdiction over crimes committed by Indians in Indian territory, in later years, Congress passed a series of statutes that infringed more and more on the jurisdiction of tribal courts. Despite attempts of the military and the Bureau of Indian Affairs to enforce American concepts of law and justice, many Indian nations have continued traditional practices. Thus, Indian people today are faced with the difficult and confusing dichotomy of competing federal and tribal criminal systems.

D. Experiences of American Indians in the Criminal Justice System

The displacement of Indian sovereignty by the encroaching Anglo-European system of laws and values has had pernicious, debilitating effects to the present. The legacy of this dispossession is graphically revealed in current criminal justice statistics. American Indians have, by far, the highest arrest rate of any ethnic group. Their arrest rate is consistently three times that of blacks and ten times that of whites.[27] (See Table III-1.) As many as 80 percent of Indian prisoners are incarcerated for alcohol-related offenses,[28] a rate twelve times greater than the national average.[29] The major crime rate is 50 percent higher on reservations than in rural America. The violent crime rate is eight times the rural rate, murder is three times the rural rate, and assault is nine times as high. Furthermore, the percentage of unreported crime on reservations is higher than anywhere else; thus, the situation is actually worse than the statistics portray, according to a 1975 Task Force Report on Indian Matters by the Department of Justice.[30]

These appalling statistics for American Indians do not exist in a vacuum. Available statistics on Indian socioeconomic problems reflect with equal starkness the fate of a people robbed of their culture, land and heritage. The poverty rate was almost three times that of whites in 1976. The median family income was $5,832 in 1969; 38.3 percent of all Indians have incomes below the poverty line.[31] In addition, 80 to 95 percent of all Indian housing is substandard.[32] Life expectancy for American Indians is 65.1 years, while infant mortality is 1.2 times greater than the national average.[33] According to the NAACP Legal Defense Fund, "By every standard, Indians receive the worst education of any children in the country."[34] Their educational achievement at the high school and college levels, which increased from 1960 to 1976, actually shows a widening gap relative to the white population.

Forty percent of all reservation Indians are unemployed, and an additional 18 percent are categorized as underemployed.[35] Their unemployment rate in 1976 was more than twice that of whites, and their teenage unemployment rate was approximately six times that of white males. In short, by every standard, American Indians are extremely unequal to the white population, and in many instances, worse off than other minorities.

Table III-1

Arrest Rates by Race, 1960-1978

Year	White	Black	American Indian
1960	572	1,957	3,492
1961	594	2,083	4,263
1962	803	2,679	8,527
1963	1,261	4,579	15,278
1964	1,198	4,185	15,815
1965	1,301	4,856	17,158
1966	1,381	6,034	19,311
1967	1,396	5,863	17,960
1968	1,572	6,626	20,536
1969	1,730	7,507	26,931
1970	2,324	9,225	24,309
1971	2,482	9,501	28,804
1972	2,638	10,521	30,647
1973	2,602	9,878	31.059
1974	2,700	9,947	30,428
1975	2,860	11,225	34,785
1976	2,943	10,958	33,278
1977	3,210	12,180	37,239
1978	3,271	12,256	36,584

Note: Rates are computed for 100,000 population 14 years and older for each race taken from the U.S. Census of Population, 1960 and 1970 and FBI Uniform Crime Reports 1960-1978.

American Indians are disproportionately represented in all phases of the criminal justice system. The Indian prison population in Montana comprises 33.3 percent of the total, while the proportion of Indians in the state population is only 3.9 percent. In North Dakota, where Indians make up only 2.33 percent of the state population, the Indian prison population is 17.5 percent. In Minnesota Indians comprise only 0.6 percent of the state population but account for 12.5 percent of the prison population, a figure 25 times their proportion in the state population.[36] (See Table III-2.) Based on 197[illegible] police records, 100 percent of those arrested in Rushville, Nebraska (a bordertown adjacent to the Pine Ridge Reservation), were Indians.[37]

Although American Indians are estimated to comprise, at the most, 10 to 11 percent of Rapid City's population, Judge Charles E. Carrell, the city's magistrate who handles all misdemeanors and preliminary hearings for felonies, estimated that 80 percent of the cases before him involve Indian people.[38] According to a 1974 report by the Flagstaff, Arizona, police department, "It is statistically possible that every Indian in Flagstaff could have been arrested at least once in 1974, since the total number of Indians arrested is nearly 300 more than the local resident Indian population.[39] Court statistics from Phoenix City, Arizona show that approximately 25 percent of all males arrested for alcohol-related offenses are Indian and that 50 percent of the women arrested for such offenses are Indian. The tragedy of these figures is underscored by the fact that Indians comprise less than 1 percent of the city's population.[40]

Because the federal government, not the state, has criminal jurisdiction on some Indian reservations, Indians convicted of crimes on these reservations are sent to federal prisons. Statistics from the Federal Bureau of Prisons give some indication of criminal justice activity on Indian reservations. Table III-3 shows commitment rates of federally sentenced prisoners for 12 years. The rate of commitment of American Indians greatly exceeds the rates for both whites and blacks. Of the inmate population in federal institutions, American Indians were 76 per 100,000, blacks were 25 per 100,000, and whites were 8 per 100,000 in 1976. American Indians have a much higher rate of incarceration than other racial groups.

American Indians also experience a higher rate of arrest and conviction than any other racial group in the United States. Although the statistics are somewhat suspect, the difference is too great to be explained solely on that basis. In fact, the disparity evidenced in these figures is too vast to be credible without assuming the operation of a discriminatory and selective system of law enforcement. This hypo-

Table III-2

American Indian Population by States and Percentages

State	Indian Population	Percentage of Total
Oklahoma	98,000	3.82
Arizona	96,000	5.41
California	91,000	0.46
New Mexico	73,000	7.16
Alaska	52,000	17.05
North Carolina	43,000	0.86
Washington	33,000	0.98
South Dakota	32,000	4.86
New York	28,000	0.16
Montana	27,000	3.91
Minnesota	23,000	0.61
Wisconsin	19,000	0.43
Texas	18,000	0.16
Michigan	17,000	0.19
North Dakota	14,000	2.33
Oregon	14,000	0.65
Illinois	11,000	0.10
Utah	11,000	1.06
Colorado	9,000	0.40
Kansas	9,000	0.39

Source: Compiled from statistics in Bureau of Census, U.S. Department of Commerce, 1970 Census of Population: Subject Reports, American Indians (1973).

Table III-3

Commitment Rates to Federal Prisons by Race, 1960-1969, 1974 and 1976

Year	White	Black	American Indian
1960	13	40	159
1961	14	42	181
1962	14	39	196
1963	15	43	200
1964	17	44	202
1965	15	43	265
1966	11	42	175
1967	12	41	150
1968	12	41	135
1969	12	42	370
1974	8	27	65
1976	8	25	76

Note: Data were taken from Federal Prisons, 1960-69, and Federal Bureau of Prisons, 1974 and 1976; rates are based on 100,000 population 14 years and older for each race taken from the U.S. Census of Population, 1960 and 1970.

thesis is supported by reports and testimony from the local Indian community.

Indians do not receive the same quality of protection from law enforcement agencies as do non-Indians. The Civil Rights Commission heard numerous allegations during its 1971 field hearings that the local police in Rapid City and Sisseton (on the Sisseton Reservation), South Dakota, seldom responded to calls from the Indian community.[41] The American Indian Policy Review Commission Task Force II stated, "There are repeated assertions by tribal community leaders that federal marshals, prosecutors, and the FBI are very selective in the manner in which they enforce felony laws on reservations. All too often, non-Indians are not prosecuted as vigorously as Indians."[42] Hazel Bonner, a volunteer counselor for Citizens Against Rape in Rapid City, South Dakota, stated that in her two years of counseling she did not know of a single Indian rape case in which an arrest had been made.[43] Michael Wilson, a Papago Indian and a member of the South Tucson Indian Center Board of Directors, testified before the U.S. Commission on Civil Rights that Indians in South Tucson are constantly and indiscriminately arrested for public intoxication in situations under which whites would be far less likely to be arrested.[44]

Another example of discriminatory law enforcement and harassment is the case of Raymond Yellow Thunder. Early in the spring of 1972, Yellow Thunder, an elderly Sioux from the Pine Ridge Reservation, was accosted by a group of five whites, beaten, stripped below the waist, taken to the American Legion Hall in Gordon, Nebraska, and forced to dance for the entertainment of the celebrating white patrons. He was later stuffed into the trunk of a car and then abandoned. He was found dead several days later. No investigation was conducted until members of the American Indian Movement (AIM) organized a demonstration and demanded that action be taken.[45]

An attempt made several years ago on the life of Puyallup tribal chairwoman and Indian activist, Ramona Bennett, underscores the lawlessness that many American Indians face in the course of their daily lives. On February 7, 1978, a car pulled up beside the one in which Ms. Bennett was driving, a shotgun was jammed out the window, and a blast struck her car, inches above her head.[46] The assailant has yet to be apprehended. Ms. Bennett has been involved in controversial Indian issues for a number of years, including fishing rights, interracial adoption, and opposition to a newly nominated U.S. District Court judge in Washington, Jack Tanner.

In contrast to the above examples of nonenforcement where whites were the perpetrators, Indians often find themselves the hapless victims of unprovoked police brutality, harrassment, and sadism. The Rapid City Field Trip Summary of the U.S. Commission on Civil Rights documents instances in which police, often accompanied by the county sheriff and State Highway Patrol, followed Indians home, broke in, and destroyed property. Several Indians reported having been severely beaten by police officers, resulting in hospitalization.[47] Reverend John Fife, a pastor of the Southside Presbyterian Church in South Tucson testified in hearings before the U.S. Commission on Civil Rights that during the past few years several members of his congregation suffered from beatings they received while being held in the local jail.[48] Joanne Yellow Bird, a young Indian mother, was kicked in the stomach by a police officer during the arrest of her husband in Rushville, Nebraska, in September 1976. Days later, doctors confirmed the death of her seven month old fetus, caused by the police officer's kick; the police subsequently refused to provide medical assistance to Mrs. Yellow Bird. White citizens have formed self-styled "civil defense" units across the Midwest, acting as a quasi-police force with the local Indian communities as their primary target. These vigilante groups allegedly have often been involved in police posses and arrests, and appear to have no compunctions about arming themselves with M16s.[49] Members of the AIM and other politically active Indian groups are objects of special attention and harassment by state police, according to the South Dakota Advisory Committee on Civil Rights.[50] The Advisory Committee's report noted that Donald Holman, a member of the Sisseton-Wahpeton Sioux Tribe, stated in his February 9, 1977, letter of resignation from the South Dakota Criminal Justice Commission:

> I have become increasingly aware of the fact that Native Americans who hold traditional views (the tradition of their own culture) and are political activists, are singled out for special treatment by the criminal justice system in South Dakota. . . . I have seen many things happen to native people which I believe were politically or racially motivated.

Police brutality and harassment are difficult charges to prove and are seldom pursued. Many incidents of physical abuse by police officials go unreported, an inaction bred by fear of further harassment or a deadening sense of futility.[51]

1. Discrimination Within the Judicial System

The discriminatory law enforcement experienced by American Indians is perpetuated in the U.S. judicial system, where it assumes the more subtle form of institutionalized discrimination and racism.

The formal setting of bail, often the first contact the accused has with the court system, is a bitter presage of what is to follow. Except for capital crimes, all defendants have a constitutional right to reasonable bail.[52] It is not legitimate to use bail as a pretrial punishment or to suppress an unpopular cause. Despite the constitutional guarantee, bail set for Indian people is consistently excessive, and often the entire system operates to their disadvantage. The South Dakota Civil Rights Advisory Committee heard allegations that high bail was set for certain Indian persons in order to keep them in jail, citing as an example the bail set for several young Indian men charged with burglary in connection with the second takeover of the Wagner Pork Plant. Bond was set at $25,000 for each defendant, despite the fact that all of the accused were minors and none of their families had property or assets of any consequence.[53]

This is just one example of the great discretion trial judges have in setting bail,[54] a process that does nothing to prevent judges or magistrates from using their own subjective evaluation of the likelihood of the defendant's appearance at trial. Too often, racial stereotypes play a major role in such a subjective system. In addition, American Indians have more difficulty than whites in raising bail. The high unemployment rates and the large percentage of families with incomes below the poverty line creates an environment in which ready cash is rarely available. The high levels at which bail is set force a reliance on commercial bonding--an inherently unfair system because the defendant forfeits his 10 percent fee, whether or not he appears for trial. Commercial bondsmen generally consider Indians to be bad risks because they claim it is difficult to locate defendants on the reservation, while some bondsmen refuse to serve Indian defendants at all. The combined result of all of these factors is that a large number of Indian defendants suffer unnecessary pretrial detainment simply because they cannot post bond. A presumption favoring release of defendants on their own recognizance should always be in operation, and judges should recognize the implicit constitutional requirement that bail be scaled to reflect the defendant's ability to pay.[55]

The right to plead not guilty is another important constitutional right for criminal defendants. The magistrate or judge is required to fully inform a defendant of this right before accepting a guilty plea. However, whether this constitutional right is being adequately protected is questionable given the high number of guilty pleas among American

Indians. A recent informal survey found that 90 percent of the American Indians in the South Dakota Penitentiary had pled guilty.[56] The Pennington County, South Dakota, Public Defender's records show that only 13.4 percent of the Indian defendants pled not guilty in a one-year period from October 1, 1975, to September 30, 1976.[57]

Lack of legal representation before or at the time of pleading contributes significantly to the high rate of guilty pleas. Police and court officials frequently fail to adequately inform the accused of his right to silence and to free counsel, or fail to offer free counsel to the accused until after he pleads not guilty. American Indians for Community Action stated in hearings before the U.S. Civil Rights Commission that the absence of interpreters fluent in the Navajo and Hopi languages to advise American Indians of their constitutional rights was the greatest criminal justice problem in Flagstaff, Arizona.[58]

A guilty plea is often chosen as the path of least resistance. According to Bryan Short of the Arizona ACLU, "If a defendant pleads guilty, he is allowed some length of time in which to get the fine together . . . . If he pleads not guilty, he is faced with the problem of coming up with bond . . . ."[59] Michael Wilson, in an interview with a member of the U.S. Commission on Civil Rights, stated that few Indians are aggressive enough to stand up for their procedural rights or to demand representation by counsel. Most will simply plead guilty to avoid a confrontation.[60] Renee Howell, a former paralegal for the Wounded Knee Legal Defense/Offense Committee, stated that most Indian defendants plead guilty, even if they are innocent, because they fear the treatment they might receive in a jury trial.[61]

The high percentage of American Indians who plead guilty also reflects the widespread use of plea bargaining. In the plea bargaining process, a defendant agrees to plead guilty if certain conditions are met--usually a reduction of the charges. The prosecution, in turn, recommends a lighter sentence or promises to drop some of the pending charges. The American criminal justice system has been built on the practice of plea bargaining and guilty pleas,[62] without which many commentators agree the caseload would prove to be too large for the present system to handle.[63] The practice is, however, a subject of considerable controversy. The insidious practice of overcharging has been fostered by the reliance on plea bargaining, applying extra pressure on a defendant to plead guilty to a lesser charge.[64] On the practice of overcharging, Jim Robideaux, the American Indian director of the Rapid City Indian Service Council's program for ex-offenders, stated:

> Now [the police] pick up a man and they'll slap a whole bunch of charges on him . . . only one crime is committed, but they'll slap a whole bunch of [charges] on him and then in comes a plea bargain later on.[65]

The potential abuses of the plea bargaining system are often realized in the case of American Indian defendants.

When legal representation is present, it often proves inadequate. Indians charged with a crime most often are unable to afford competent counsel.[66] Thus, a fair trial for an Indian depends on the availability of free legal assistance. Court appointment of lawyers from the local bar associations is the most common method of providing such representation. Under this arrangement, many Indian defendants do not receive any consultation or representation before trial.[67] General dissatisfaction with this arrangement exists among Indian people who view inexperience, prejudice, apathy, and misconception as contributing factors to the ineffectiveness of court-appointed lawyers.[68] An informal survey of American Indians who were in the Sioux Falls prison between September 1975 and January 1976 found that 75 to 90 percent of them had court-appointed attorneys.[69] Furthermore, a court-appointed lawyer in a small town might blunt the vigor of his representation of an Indian defendant for fear of repercussions to his private practice. The National Center for Defense Management has developed a study of legal defense delivery systems in South Dakota. James Neuhard, a consultant for that study, explained that the trial of an Indian defendant is carried out in an extremely emotionally charged atmosphere where "the volatile nature of their cases and extreme public exposure places pressure on local defense lawyers which detrimentally affects the Indian's defense."[70] Jim Robideaux lent his support to this view when he spoke before the South Dakota Advisory Committee to the U.S. Commission on Civil Rights:

> Most often [court-appointed attorneys] live here, they work here, and if they do a pretty good job . . . pretty soon they kind of get a little bit of pressure . . . and the next thing you know the attorney . . . is not objecting to . . . inadmissible evidence or he is not making the motions that are . . . very necessary for a man's appeal . . . So my feeling is that if attorneys do a pretty good job . . . they have a tendency to get black-balled . . . maybe they won't get the business now that they normally would get.[71]

Representation by public defenders is rarely available in rural areas. South Dakota has one public defenders office, located in Rapid City, for the entire state.[72] A unified, insulated system for criminal defense, such as a statewide public defenders office, offers many advantages, including avoidance of the above-mentioned conflicts of interest. The chief recommendation from the study by the National Center for Defense Management was to establish a full-time public defender system throughout South Dakota.[73] However, dissatisfaction with even the public defender system exists among the Indian populace, who criticize the scheme for its lack of experienced lawyers, the high turnover of personnel, and the excessive caseload.[74]

When an Indian defendant walks into court, he faces an almost entirely white system. Communication, even with his own counsel, often poses great obstacles. He has difficulty understanding the court procedure. Even the right to an impartial jury is often abridged in the case of an Indian defendant. Allegations of prejudiced jury panels are widespread within the Indian community. Jay Schulman, project coordinator for the National Jury Project, after conducting a survey of potential jurors in western South Dakota during January and February 1976, presented an affidavit to the U.S. District Court for South Dakota in which he stated:

> The level of prejudice against the defendants [two AIM members] among prospective jurors in the South Dakota Federal District is so great that there is no chance that the defendants can obtain a jury in any of the four South Dakota divisions sufficiently free from negative predispositions to render a verdict on the evidence presented in the courtroom alone . . . .[75]

Few Indians serve on jury panels, thus denying an Indian defendant his right to be adjudged by a jury of his peers. Charles Carrell, a law magistrate in South Dakota, stated that he could not recall a single case in which an American Indian served on a jury in his court.[76] Jury panels are customarily chosen from voter registration lists, a procedure that effectively excludes a large majority of Indians who do not register to vote.

Once an American Indian has been jailed, he or she will serve, on the average, 35 percent more time before parole than a non-Indian for a similar offense.[77] This is because (1) Indian offenders receive, on the average, longer sentences than do non-Indians and (2) an Indian offender serves a longer time before he is paroled. With regard to the former, Indian defendants typically do not fare well in the discretion-filled process of sentencing. A Minneapolis study revealed that American Indians convicted of criminal misdemeanors in that city were more than twice as likely as convicted whites to serve jail sentences.[78] A one-year study of white and American Indian prisoners undertaken by two professors at the University of Montana illustrated that American Indians were less likely to receive deferred sentences (12.7 percent versus 24.4 percent), more likely to receive a partially suspended sentence (4.2 percent versus 2.6 percent), and more likely to receive sentences of full imprisonment (76.1 percent versus 59.4 percent).[79]

Statistics on comparative rates of parole underline, once again, the discrimination found throughout the criminal justice process. In the federal system, the average rate of release by parole during 1973-74 was more than 40 percent greater for non-Indians than for Indian prisoners convicted of crime in the same category.[80] The relative timing of paroles differs as well. Among parolees, Indians had served, on an average, a 15 percent more of their original sentence than non-Indians.[81] These disparities cannot be explained by the type of crime committed or the length of original sentence. Longer sentences, fewer paroles, and higher arrest rates result in a consistently disproportionate rate of incarceration for Indian offenders.

2. Problems in the Penal System

The prison environment, in which a disproportionate number of American Indians find themselves, given the selective and discriminatory law enforcement system, is especially hostile and alien. Indians are greatly overrepresented in prison populations, yet they often lack a voice in prison operations. For example, in South Dakota, the Indian population was less than 5 percent in 1976. However, 34.6 percent of the total arrests in the state were of Indians. The Indian population in the State Penitentiary in Sioux Falls is 33 percent. The Indian population at the Women's Prison is 50 percent.[82] Overrepresentation of Indians in the correctional system does not, however, extend to prison staffs. For instance, in South Dakota, the State Training School, the Youth Services Program, the Board of Pardons and Paroles, and the Probation and Parole Staff all have no Indian personnel, and the State Penitentiary has few.[83]

It is commonly noted that Indians receive poor treatment in prisons because of their relative powerlessness as a minority.[84] Blacks and Hispanics are much more vocal and aggressive in their demands. The perceived weakness and relatively small number of Indian inmates often cause them to be prime targets of harassment by prison staff and other inmates. Indian inmates from the Fort Belknap and Rocky Boy Reservations in Montana reported receiving cruel and unusual treatment while incarcerated. They were not given blankets in winter, some were forced to eat their meals on the floor with no utensils, and others were denied medical services.[85]

Members of prison staffs are often insensitive to the special problems facing American Indians, and few make any effort to positively reinforce an Indian inmate's cultural identity.[86] In many cases, Indian cultural/religious groups that are initiated by the inmates are actively suppressed by prison authorities. The groups often find their mail censored or their mailing privileges suspended. Further examples of harassment include Indian inmates not being allowed to wear beaded headbands and being forbidden to speak native languages or to play native music. Many Indian inmates have been subject to disciplinary action for refusing to cut their hair.[87]

Statistics indicate that Indian prisoners are often treated more harshly than other inmates. Figures provided by the Minnesota Indian Programs Coordinator concluded that, while Indian offenders comprise approximately 9 percent of the total inmate population in the Minnesota Department of Corrections, they often comprise more than 75 percent of the population in the maximum security units (lock-ups) and are often less than 1 percent of the minimum security unit population.[88]

Often, no alternative facilities are available for alcohol offenders, who are in need of treatment, not punishment.[89] The lack of alternative programs, such as halfway houses and treatment programs, has an especially harsh effect on the Indian offender population, the overwhelming majority of which has committed crimes that are alcohol-related.[90]

It should be noted that Indians are poorly represented in most penal rehabilitation programs. A 1974 report on western states showed that more than half of American Indian offenders do not participate in rehabilitation programs. Furlough or counseling programs rarely have an Indian cultural orientation. Furthermore, as noted by John Poupart, director of the Anishinabe Longhouse, a community corrections facility for Indian offenders in Minneapolis, the standards for admissions in alternative institutions address characteristics that are largely irrelevant to Indian lifestyles, such as credit ratings and a fixed place of residence.[91]

Moreover, most state and federal programs fail to rehabilitate Indian offenders because correctional officials do not recognize that American Indians suffer from cultural conflict. Generations of contact with the majority society have left many American Indian prisoners without a favorable self-concept because of the constant assault on their cultural heritage. It must be recognized that less is known about the proper psychological methods of treatment and rehabilitation for the Indian offender than for offenders from other ethnic groups,[92] and Indian-run counseling and rehabilitation centers must be established to fill this vacuum. The lack of alcohol rehabilitation centers, the low participation of Indians in general rehabilitation programs, and the lack of a cultural identity within the prison setting all contribute to the recidivism rate, which sometimes reaches 54 percent among Indian offenders.[93]

Any reassessment of the U.S. Indian policy, be it health care delivery or the treatment of Indian offenders within the criminal justice system, must begin with the recognition that prejudice has always been a factor influencing the relationship between the races. The preceding statistics demonstrate quite clearly that the problem continues to exist. The hold of this discrimination cannot be loosened by submitting Indian defendants to "equal treatment" under the American criminal justice system--a system acknowledged to be rife with the kind of discretion that enables judges, the police, juries, prosecuting attorneys and prison officials to vent long-held personal prejudices. What is needed is an acknowledgment of the complicity of the white judicial system in maintaining this prejudice and, thus, its fundamental inappropriateness for administering justice to American Indians. Instead, the distinction between white and Indian traditions, culture, values, and laws must be recognized, along with a commitment to respect and to uphold viable tribal legal practices that have come down through the centuries.

E. Tribal Criminal Justice Systems

Before stating the current conditions of tribal justice systems, it is vital to understand their evolution. Indian tribes, as totally sovereign and independent nations, had their own laws and customs regulating criminal behavior within the tribe. After the arrival of the white man, many tribes were "removed" to reservations where their former legal systems were disrupted and destroyed.[94] (See Table III-4.) Tribal economy and political structure were also uprooted, and many tribes grew dependent on the U.S. government. Indians became captives within these reservations that were established as their last homeland. Many viewed reservations as tantamount to concentration camps, the last chapter in the legacy of countless wars and broken promises perpetrated by the U.S. government. Robbed of their lands and economic base, tribes sank into extreme poverty. Education was almost nonexistent, unemployment was prevalent, and despair was rife. These factors have fostered the social degradation that has led to a crime rate grossly disproportionate to the national norm.[95]

Table III-4

Tribal Profile by Population

Tribe	State	Total Population	Population on or Near Reservation
Navajo	Arizona-New Mexico-Utah	146,200	131,400
Cherokee	Oklahoma	47,000	21,400
Lumbee	North Carolina	40,000[a]	Not Available
Minnesota Chippewa	Minnesota	31,200[b]	7,800
Choctaw	Oklahoma	28,000	10,800
Creek	Oklahoma	18,900	15,200
Pine Ridge Tribe	South Dakota	18,300	11,400
Turtle Mountain Band of Chippewas	North Dakota	18,200	7,300
Papago	Arizona	16,500	8,000
Gila River Pima-Maricopa	Arizona	15,500	8,300
Chickasaw	Oklahoma	11,500	5,900
Citizen Bank of Potawatomi	Oklahoma	11,400	1,400
Blackfeet	Montana	11,000	6,200
Rosebud Sioux	South Dakota	11,000	7,500
Cheyenne River Sioux	South Dakota	9,100	4,300
Kiowa	Oklahoma	8,700	3,300
Commanche	Oklahoma	8,000	3,300
White Mountain Apache	Arizona	7,700	6,500
Sisseton Sioux	North Dakota-South Dakota	7,200	2,400
Standing Rock Sioux	North Dakota-South Dakota	7,100	4,700

[a] American Indian Policy Review Commission, Final Report 472, 1977.

[b] The Minnesota Chippewa Tribe is an organized tribal entity of six Chippewa Tribes.

Source: Memorandum, Branch of Tribal Enrollment Services, Bureau of Indian Affairs (June 26, 1978) and U.S. Department of Commerce, Federal and State Indian Reservations (1975).

Seeking to ameliorate the deplorable situation that has developed under the federal management of Indian affairs, the United States adopted a policy of "self-determination" for Indian tribes.[96] It was felt that, if the tribes were encouraged to develop or to expand their own system of justice, tribal members would respect and trust such systems and maintain a more orderly society. In theory, the policy ultimately was to lead back to tribal self-government and economic development, independent of state and federal government interference. It was conjectured that, if tribes were allowed to develop strong credible institutions, the administration of criminal justice would improve and, in turn, the crime rate would diminish.

However, to accomplish such a goal, tribal institutions must exist as separate entities, independent of state and federal intervention.[97] While espousing a policy of tribal self-government, the United States continues to appropriate large funds to tribes to promote assimilation, rather than attempting to develop tribal institutions as unique, distinct and sovereign governments. This serves not only to weaken tribal government systems, but also to increase tribal dependence on the federal government.[98]

1. Public Law 280

The pattern of criminal jurisdiction found on Indian reservations was altered in 1953 by the passage of Public Law 280.[99] Public Law 280 was designed to further the federal termination policy adopted in the forties and fifties[100] by giving certain designated states outright civil and/or criminal jurisdiction over Indian reservations within their borders[101] and authorizing others to adopt legislation, or to amend their state constitutions to assume jurisdiction over Indian country.[102] However, some of these assumptions of jurisdiction are highly questionable and, in some cases, have been successfully challenged.[103]

Only ten states are under Public Law 280, so not all tribes were affected. Nonetheless, most tribes sensed the terminationist threat posed by the law. As a result of vigorous tribal protest, the Act was amended by the 1968 Indian Civil Rights Act to add a tribal consent requirement and to allow states to retrocede their jurisdiction over Indian country to the federal government.[104]

Neither the General Crimes Act nor the Major Crimes Act is applicable in P.L. 280 jurisdictions.[105] Thus, except for expressly federal crimes, P.L. 280 states may exercise jurisdiction in Indian country, to the exclusion of federal authorities, over offenses committed by Indians against either Indians or non-Indians and over non-Indians against Indians.[106] P.L. 280 actually gives more criminal jurisdiction to the states than the federal courts can assume. In states not bound by P.L. 280, jurisdiction over offenses committed by Indians against Indians, except for the fourteen major crimes, rests with the Indian tribes rather than with the federal government.[107]

Many Indian tribes have urged that P.L. 280 be repealed on the ground that it authorizes unilaterial application of state laws to all tribes without their consent regardless of theirneeds and special circumstances. Tribes also assert that tribal laws are unnecessarily preempted by P.L. 280 and, hence, they cannot effectively govern their communities.[108]

The issue of concurrent tribal jurisdiction under P.L. 280 is hotly debated. Under long-standing principles of Indian law, Indian tribes retain all powers of internal sovereignty except as they are modified by agreement or statute.[109] The language of P.L. 280 does not clearly abrogate tribal criminal jurisdiction; hence, tribes should be recognized as retaining concurrent jurisdiction over criminal matters. This contention is supported by the language of the Act, which indicates that Congress intended the continuation of the tribal court system.[110]

In assuming jurisdiction over Indians within their borders, states affected by P.L. 280 promised to provide law enforcement services. Yet, Indian nations repeatedly have found state and federal authorities unwilling to enforce the laws on Indian reservations.[111] Understaffed and underfunded tribal police are forced to take over in desperate situations. Many Indians believe that, in assuming jurisdiction over Indian reservations, the state considered not the needs of the tribe, but only those of the non-Indian population.[112] Public Law 280 states should be relieved of the law enforcement burdens that they are unable or unwilling to shoulder, and Indian nations, with the assistance of the federal government where needed, should be given the opportunity to provide adequate law and order.

2. Tribal Police

Traditionally, federal law enforcement on the reservation has been sporadic and weak at best. Four agencies have been responsible for law enforcement: tribal police, state police, the Federal Bureau of Investigation and the Bureau of Indian Affairs. This overlapping of responsibility has caused a duplication of activities, lack of coordination and cooperation, confusion concerning accountability, and general inefficiency.[113] Augmenting this problem has been the uncertainty of authorities concerning the existence and extent of the jurisdiction that they possess.[114] Jurisdiction usually depends on the type of crime committed, the race of the suspect and victim, and the location of the crime.[115] Further, uncertainty has been spawned by legislation such as P.L. 280[116] and the Major Crimes Act.[117] Thus, the reservations are left with too many law enforcement agencies from outside the reservation that have overlapping or uncertain jurisdiction.

Another problem is that tribal police are poorly trained, underfunded, and ill-equipped.[118] Of the four agencies, the tribal police work most closely, continually, and cooperatively with the Indian people because of their accessibility to and familiarity with people. The tribal police force holds a distinct advantage over an FBI or state agent who may have to travel more than 200 miles to investigate a crime. Unfortunately, tribal police are often denied the necessary equipment to maximize their effectiveness.

Furthermore, Indian people have generally looked on the FBI with suspicion and distrust.[119] Thus, they are less likely to cooperate with these white agents whom they view as aliens. It has also been alleged that FBI agents ascribe little importance to reservation crime unless the victim is white.[120] The BIA police have been similarly criticized for their less than adequate performance. The obvious answer is to replace both the FBI and BIA agents with the more accessible and responsible tribal force.

The ultimate solution would be for the tribal police, under the direction of the tribal governments,[121] to assume exclusive responsibility for law and order on the reservations. Most tribes lack sufficient funds to train and maintain an adequate tribal police force. Jurisdictional uncertainties also discourage such an undertaking. In some states, federal and state governments have sought to gain criminal jurisdiction over reservations. Yet, in such cases, the agencies prove unwilling to provide the manpower and financial commitments necessary for a competent law enforcement system.

To alleviate these problems, jurisdictional conflicts and confusions must be resolved. The primary criminal jurisdiction that tribes have exercised for centuries ultimately should be operated by tribal governments over all crimes, major and minor, all persons (including non-Indians), and all lands within the reservations. The serious problems caused by the institutionalized racism of P.L. 280 would thus be removed, and a more effective system could develop.

3. Tribal Courts

Many tribes have their own justice systems. One encouraging sign indicating the potential of tribal governments in the area of justice and law enforcement has been the reemergence of tribal courts.[122] Tribal courts have made tremendous progress in the last few years. Tribal judges are becoming more sophisticated and knowledgeable and can rely on the expertise of tribal advocates and paralegals. Yet, as caseloads increase, many tribal courts lack sufficient personnel to adequately handle all the cases. Tribes need better court facilities and more full-time judges, paralegals, and lawyers. Yet few tribes possess the necessary funds to substantially expand their tribal justice system,[123] and present sources of financial assistance prove inadequate.

The tribal court appellate system also needs to be more fully developed.[124] Many tribal courts either do not have an appellate system or rely on administrative courts of the Interior Department. Often, the appellate court consists of the tribal council, which creates a further problem of inadequate checks and balances. To be more effective, the tribal court judicial system will have to maintain an independence and separateness from the tribal executive and legislative branch.[125]

Just as the tribal police force needs to have at least primary and perhaps exclusive jurisdiction over reservation law enforcement, tribal courts must have full criminal jurisdiction over all cases prosecuted on the reservation.[126] As stated earlier, jurisdiction in Indian country is complex and confusing. Many tribal courts exercise jurisdiction over tribal members only.[127] Yet, for tribal self-government to be meaningful and for the judicial system to be effective, tribal courts will have to assert territorial jurisdiction over all crimes. The extent of tribal court jurisdiction varies among the different tribes. Sometimes restrictions are imposed by federal legislation and sometimes by the tribes themselves, if they feel they are not ready to assume the responsibilities. The intrusion of federal jurisdiction and restrictions on tribal judicial autonomy in Indian country still poses problems to the efficient administration of justice.

One such problem has been the concurrent or exclusive federal jurisdiction over crimes committed by non-Indians in Indian country. In 1978 the U.S. Supreme Court decided that Indian tribes do not have concurrent jurisdiction over non-Indians. Under the General Crimes Act, Congress legislated that criminal jurisdiction over non-Indians belongs to the federal government. This decision against exclusive or concurrent criminal jurisdiction over non-Indians is important because it negatively affects the ability of tribal police to maintain law and order on the reservations. Since federal and state authorities are often slow to arrest and prosecute non-Indians committing offenses on reservations, lack of tribal authority creates a law enforcement vacuum in many cases.[128] The decision is also important from a political point of view because denying tribal jurisdiction over non-Indians erodes the concept that the tribes are sovereign entities possessing inherent jurisdiction. The doctrine of inherent sovereignty states that tribes retain territorial jurisdiction over all of their land unless the United States has by treaties or special legislation taken all or a portion of this jurisdiction away.

The notion of the concurrent jurisdiction of Indian tribes is difficult to understand and has posed some problems in the law enforcement area. Eventually, tribes should be able to assume full and exclusive jurisdiction over their territories. Another major reversal in attaining this goal has been the outcome of litigation. In the 1978 case of Oliphant v. Suquamish Tribe, the Supreme Court concluded that "Indian Tribes do not have inherent jurisdiction to try and punish non-Indians."[129] It is unlikely in the near future that Congress will repeal the General Crimes Act so that tribes can exercise this jurisdiction.

Another major piece of federal legislation that has posed many problems to tribal courts and the administration of justice within Indian reservations[130] is the Indian Civil Rights Act of 1968.[131] If tribes are to continue as self-governing, autonomous entities, tribal courts must be allowed to develop as unique Indian justice systems with their own customs, laws, and traditions.[132] In 1968, the U.S. Congress enacted an Indian Bill of Rights[133] as part of the 1968 Civil Rights Act. The Act was passed to ensure that American Indians are offered the broad constitutional rights secured to other Americans.[134] In theory, the purpose of the Act was to protect individual Indians from civil rights violations by their own tribal governments.

The Act, however, favors individual rights to the detriment of tribal sovereignty. First, the Act imposes a foreign system of values and justice over and in place of traditional tribal laws and customs. Indian courts are not free to adopt their own procedure or to apply tribal laws. Rather, all the laws and procedures must conform to the value system and constitutional framework of the United States. Many tribal judges and court personnel are unfamiliar with current doctrines of constitutional law and the concepts of justice necessary for compliance with the Civil Rights Act. Also, administration of tribal justice under the Indian Civil

Rights Act requires considerably greater funds since the Act can be interpreted to mean that tribal courts must allow a jury trial for almost any offense and defendants must be allowed representation by professional attorneys.[135]

Second, under the Act, the maximum sentence that tribal courts can impose is six months and/or a maximum fine of $500.[136] Such a limitation is arbitrary and unwarranted and diminshes the power of the tribal court. It also robs the tribal justice system of necessary flexibility in deterring crime. The problems caused by such federally imposed limitations on the powers of tribal courts can clearly be seen in the case of U.S. v. Wheeler, Docket No. 76-1629, decided by the U.S. Supreme Court in 1978.

The factual context of the case is useful in clarifying the issue:

> A Navajo Indian was involved in an incident with a young Indian girl on the Navajo reservation. He pleaded guilty in the Navajo tribal court of willfully contributing to the delinquency of a minor and was sentenced by the tribal court to serve 60 days at hard labor or to pay a fine of $120. The United States, however, received evidence that he was guilty of a larger crime and attempted to prosecute him in federal district court for "assault with intent to rape."
>
> The defendant moved for a motion to dismiss the indictment on the ground that his federal prosecution was barred by the double jeopardy clause of the 5th Amendment since the prosecution was based on the same incident and involved the same acts as his conviction in tribal court. The double jeopardy clause states that a defendant cannot be subject to prosecution twice by the same sovereign for offenses arising out of the same acts. The district court therefore granted the motion to dismiss and the Court of Appeals affirmed the dismissal holding that since Indian tribal courts and U.S. district courts are arms of the same soverign, once a defendant is convicted in one court, he cannot be prosecuted for an offense arising out of the same acts in the other court.
>
> The United States argues that such a prosecution is allowable because tribal courts are not arms of the same sovereign as U.S. district courts. Implicit in the United States argument is the notion that Indian tribes still possess attributes of inherent sovereignty.

> The United States further notes that the holding of the Court of Appeals means that an Indian could escape prosecution of a serious federal crime such as rape by pleading guilty to violations of a lesser offense in tribal court. The United States points out that not to allow federal prosecution in such cases would be unjust and will eventually result in congressional abrogations of tribal court jurisdiction.

However, in its brief the government failed to mention that the problem could easily be solved if tribes were allowed to punish criminals without artificial limitations, such as the maximum 6-month sentence imposed by the Indian Civil Rights Act. In its decision, the Supreme Court speaks about the "retained sovereignty" of the Navajo tribe, a recognition that, while some aspects of sovereignty have been divested from them, "Indian tribes have not given up their full sovereignty."

> In sum, the power to punish offenses against tribal law committed by tribe members, which was part of the Navajo's primeval sovereignty, has never been taken away from them . . . and is attributable in no way to any delegation to them of federal authority. It follows that when the Navajo Tribe exercises this power, it does so as part of its retained sovereignty and not as an arm of the federal government.
>
> Since tribal and federal prosecutions are brought by separate sovereigns, they are not "for the same offense" and the Double Jeopardy Clause thus does not bar one when the other has occurred.

And finally, the Act can be interpreted as waiving the sovereign immunity of the tribes, thereby allowing a plaintiff to sue the tribe in federal court for violation of constitutional rights.[137] Tribes, most of which already lack sufficient funds, are now required to spend more money on additional litigation and potential damage awards to individual plaintiffs.

An important legal issue surrounding civil litigation under the Indian Civil Rights Act and the extent of federal intervention into tribal life authorized by the Act, was resolved in 1978 with the U.S. Supreme Court's decision in Santa Clara v. Martinez, Docket No. 76-1615. The case required the Supreme Court to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members.

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A female of the Santa Clara Pueblo Indians brought suit in federal court against the tribe and its governor, seeking declaratory and injunctive relief against enforcement of a tribal ordinance denying membership in the tribe to children of female members who married outside the tribe, claiming this was a violation of Title I of the Indian Civil Rights Act of 1968.

The Court concluded, "Efforts by the federal judiciary to apply the statutory prohibitions in a civil suit may substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity.[138] The Court added:

> Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of § 1302 . . . . But unless and until Congress makes clear its intention to permit the additional intrusion on tribal sovereignty that adjudication of such actions in a federal forum would represent, we are constrained to find that § 1302 does not impliedly authorize actions for declaratory or injunctive relief against either the tribe or its officers.[139]

Nonetheless, the Indian Civil Rights Act stifles any meaningful opportunity for tribal institutions to develop autonomous procedures and practices. Tribal courts are forced to adopt a system based on values of American justice to the detriment of Indian custom, tradition, and community needs. Many tribal councils are revising or rewriting tribal criminal law codes.[140] However, because of the Indian Civil Rights Act, the tendency is to "Anglicize" the revisions by modeling them on existing American codes, rather than by drawing on traditional Indian laws and cultures.

For tribal criminal justice systems to work efficiently, tribes should also operate their own jails. As stated earlier, traditional Indian justice systems had no need for jails. However, as more and more Anglo legal systems were imposed on tribes, jails became a necessary evil. Today, such prison systems increasingly have become outdated and inadequate.[141] Facilities as well as rehabilitation programs are desperately lacking.[142] The situation can only be ameliorated through increased funding and active support of the concept of tribal autonomy.[143] It seems logical that for an integrated criminal justice system to work tribes must have power and control over all aspects of the system.[144] If Indian tribes are to remain distinct political communities, their inherent sovereignty and right to self-government should be respected,[145] and if the tribes are to become efficient political organizations, a complete assumption of judicial powers within their criminal justice system is needed.[146]

4. Tribal Criminal Laws and Legislation

Federal interference with the tribal legislative process has been a major obstacle in developing effective tribal criminal justice systems.[147] To facilitate a more efficient system, BIA and other federal agencies must permit tribal councils to enact law and order codes without the requirement of federal approval. Tribes should also be able to enact criminal laws without restraint from federal statutes limiting their jurisdiction, such as P.L. 280 and the Major Crimes Act.

Tribal laws should be sufficiently comprehensive to encompass all criminal activities occurring on the reservation and should be the definitive standard for law enforcement. The multitude of autonomous legislative bodies such as federal and state agencies, BIA, tribal councils, and federal and state legislatures clearly detracts from orderly administration of justice.[148] The tribal council should enact all laws on the reservation to ensure uniform enforcement and treatment to all persons.

F. Conclusion

Indian self-government is beneficial to the development of better administration of justice on Indian reservations. Self-government encompasses every aspect of self-sufficiency in the criminal justice system, including autonomy in legislation, law enforcement, judicial policy and jurisdiction. Until these goals are realized, the state of criminal justice on reservations will remain chaotic.

Indian tribes have been recognized as possessing sovereign power and, with federal assistance, have developed their own tribal police forces, court systems, and criminal codes. Many of these justice systems contain critical inadequacies because of limited funds.[149] It is the responsibility of the federal government, under the trust relationship doctrine, to financially assist the administration of the tribal justice systems. Though financial and technical training assistance is warranted, federal interference in the internal tribal affairs serves only to negate the beneficial effects. Unfortunately, the federal government too often views its role as one of dictating to tribal governments. It is hoped that in the future the U.S. government will limit its involvement in this area but provide more financial assistance. Otherwise, future tribal criminal justice systems should be left to internal self-government.

NOTES

1. Transcripts of National Minority Advisory Council on Criminal Justice, Sioux Falls, S.D., May 1978.

2. Transcripts of National Minority Advisory Council on Criminal Justice, Phoenix, Arizona, February 1978.

3. Ibid.

4. Transcripts of National Minority Advisory Council on Criminal Justice, Oklahoma City, Oklahoma, August 1978.

5. Ibid.

6. Ibid.

7. Declaration of Continuing Independence.

8. U.S. Solicitor for the Department of Interior, Handbook of Federal Indian Law, 128 (University New Mexico Press, 1970).

9. Kirke Kickingbird, "'In Our Image . . . . After Our Likeness:' The Drive for the Assimilation of Indian Court Systems," 13 American Criminal Law Review 675, 677 (1976).

10. Thompson, "Law Amongst the Aborigines of the Mississippi Valley," 6, Ill. L. Q. 204, 212 (1874).

11. K. Llewllyn and E. Adamson Hoebel, Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence (Norman: University of Oklahoma Press, 1941), p. 9.

12. A. Wallace, The Death and Rebirth of the Seneca (New York: Vintage Books, 1972), p. 25.

13. R. Young, comp., Historical Backgrounds for Modern Indian Law and Order (Washington, D.C.: Bureau of Indian Affairs, Division of Law Enforcement Services, 1969), p. 24.

14. D. Georgakas, The Broken Hoop (Garden City, New York: Doubleday and Company, Inc., 1973), p. 81.

15. R. Underhill, Social Organization of the Papago Indians (New York: AMS Press, 1969), p. 115.

16. Wallace, supra, note 5, p. 26.

17. Llewllyn and Hoebel, supra, note 4, p. 69.

18. Kickingbird, supra, note 2, pp. 678-679.

19. Young, supra, note 6, p. 25.

20. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 560-61 (1832).

21. Ibid, p. 10.

22. Indian Law Enforcement History (Washington, D.C.: Bureau of Indian Affairs, Division of Law Enforcement Services, 1975), p. 6.

23. Ibid, p. 13.

24. Ibid, p. 14.

25. Kickingbird, op. cit., note 2, p. 685.

26. 109 U.S. 556 (1883).

27. Charles Reasons, "Crime and the American Indian," Howard M. Bahr, Bruce A. Chadwick, and Robert C. Day, eds., Native Americans Today: Sociological Perspectives, 320 (New York: Harper & Row Publishers, Inc., 1972).

28. Native American Rights Fund (NARF), "Memorandum: Interagency Approach to Addressing Indian Offender Problems," 5 (Jan. 26, 1978).

29. O. Stewart, "Questions Regarding American Indian Criminology," Human Organization, Vol. 23, pp. 61-66, 1968, as quoted in Edward P. Dower, "Problem Drinking Among American Indians," Q. J. of Study on Alcohol, Vol. 27, p. 63, 1966.

30. U.S. Dept. of Justice, Report of the Task Force on Indian Matters, 23, Oct. 1975.

31. U.S. Department of Commerce, Social and Economic Statistics Administration, Subject Reports, American Indians, 120 (Washington, D.C.: Government Printing Office, 1973); Gerald S. Nagel, "American Indian Life: Unemployment, Ill Health and Skid Rows," Current 38 (Jan. 1975).

32. Nagel, op. cit., note 25.

33. Unpublished data provided by Aron Handler of the Office of Program Statistics, Indian Health Services, U.S.

Department of Health and Human Services. Based on statistical census data tapes supplied by the U.S. Bureau of the Census.

34. NAACP Legal Defense and Educational Fund, Inc., An Even Chance, 2 (New York, N.Y., 1971).

35. Alan L. Sorkin, Education, Unemployment and Economic Growth, 68 (Lexington, Mass., D.C. Health Co., 1974).

36. Native American Rights Fund, "Memorandum re: Inter-Agency Approach to Addressing Indian Offender Problems," 23 (Jan. 24, 1978).

37. Ibid, p. 4.

38. South Dakota Advisory Committee to the U.S. Commission on Civil Rights, Liberty and Justice For All, 37 (Nov. 1977).

39. Cited in the Arizona Advisory Committee to the U.S. Commission on Civil Rights, Justice in Flagstaff: Are These Rights Inalienable?, 14 (March 1977).

40. Transcript of hearing before the U.S. Commission on Civil Rights, Phoenix, Arizona, Nov. 16-17, 1972.

41. See U.S. Commission on Civil Rights, Field Trip Summary: Rapid City, South Dakota.

42. AIPRC, Task Force II, p. 35; see also, South Dakota Advisory Committee, op. cit., note 31, pp. 48-49.

43. South Dakota Advisory Committee, op. cit., note 31, p. 49.

44. U.S. Commission on Civil Rights, The Southwest Indian Report, 39 (May 1973).

45. Deloria Vine, Behind the Trail of Broken Treaties, 45 (1974).

46. The Daily Olympian and Seattle Post-Intelligence, Feb. 9, 1978.

47. See U.S. Commission on Civil Rights, Field Trip Summary: Rapid City, South Dakota, July 20-29, 1971.

48. The Southwest Indian Report, op. cit., note 37, p. 40.

49. John Keller, Yankton Sioux tribal attorney, testified to the South Dakota Civil Rights Advisory Counsel that the

Charles Mix County Civil Defense Unit was apparently an official, deputized arm of the sheriff's office. Keller further stated that both the Highway Patrol and the Division of Criminal Investigation routinely carried M16 automatic rifles and that some sheriff officers have them. South Dakota State's Attorney Raymond DeGeest stated that the Civil Defense Unit had on several occasions been called to assit law enforcement officers in Charles Mix County. (South Dakota Advisory Committee, op. cit., note 31, pp. 35-36.)

50. Ibid., p. 43.

51. Arizona Advisory Committee, op. cit., note 32, pp. 9-14.

52. U.S. Constitution, Amendment 8.

53. South Dakota Advisory Committee, op. cit., note 31, p. 81.

54. Ibid., p. 82.

55. Lowell Howard and H. Winthrop Pettigrew, "ROR Programs in a University City," 58 ABA 363, 364 (1972).

56. South Dakota Advisory Committee, op. cit., note 31, p. 76.

57. Ibid., p. 74.

58. Arizona Advisory Committee, op. cit., note 32, p. 19.

59. Northern Chapter, Arizona Civil Liberties Union, Flagstaff Municipal Court Proceedings and Rights of Defendants, 106 (Nov. 10, 1975).

60. Southwest Indian Report, op. cit., note 37, p. 40.

61. South Dakota Advisory Committee, op. cit., note 31, p. 76.

62. David M. Lawson, "Criminal Procedure: New Standard and Procedure for Accepting Guilty Pleas," 22 Wayne L. Rev. 1463, 1466 (1976).

63. Note, "Plea Bargaining and the Transformation of Criminal Process," 90 Harvard Law Review 564, 564-5 (1977).

64. National Center for Defense Management, Systems Development Study of Indigent Defense Delivery Systems for the State of South Dakota, 32 (Washington, D.C., 1977).

65. South Dakota Advisory Committee, op. cit., note 31, p. 79.

66. In Charles Mix County, South Dakota, 70 to 90 percent of the court-appointed lawyers are for Indians, according to the South Dakota Advisory Committee to the U.S. Commission on Civil Rights, op. cit., note 31, p. 66.

67. Joint Committee of the Montana, North Dakota, and South Dakota Advisory Committees to the U.S. Commission on Civil Rights, *Indian Civil Rights Issues in Montana, North Dakota, and South Dakota*, 44 (Aug. 1974).

68. South Dakota Advisory Committee, op. cit., note 31, p. 66.

69. Ibid.

70. Ibid., p.67.

71. Ibid., p.69.

72. Ibid., p.64.

73. Ibid., p. 68.

74. Ibid., p. 72.

75. Jay Schulman, U.S. District Court, District of South Dakota, Western Division, *United States* v. *Darelle Butler/Robert Eugene Robideaux*, C.R. 75-5106-3, 75-5106-2 (Affidavit: State of New York)--cited in the South Dakota Advisory Report, p. 89.

76. South Dakota Advisory Committee, op. cit., note 31, p. 85.

77. Byron Swift and Gary Bickel, "Comparative Parole Treatment of American Indians in Federal Prisons: Fiscal Years 1973 and 1974," 8 *Clearinghouse Review* 726 (1975).

78. Rachael Rohde and Robert Grama, "Racial Status and the Likelihood of Serving a Jail Sentence When Convicted of a Criminal Misdemeanor in Hennepin County, 1973-74" (unpublished paper, January 1976). The report stated that the differences regarding types of crime committed and previous criminal convictions of the defendant did not explain the differential treatment.

79. Edwin Hall and Albert A. Simkus, "Inequality in the Types of Sentences Received by Native Americans and Whites," 13 Criminology 199, 211 (August 1975).

80. Swift, op. cit., note 69.

81. Ibid.

82. Gary Bickel, "Indians in South Dakota's Correctional System" (Bureau of Social Science Research 1975). This high Indian population is partially maintained by (1) an inability to meet excessive bail and (2) the imposition of high fines against Indian people who cannot afford to pay. (Community Corrections Resource Programs, Inc., "Swift-Bird Corrections Center Feasibility Study" (Ann Arbor, Michigan 1977).

83. Ibid., note 31, p. 25.

84. Southwest Indian Report, op. cit., note 37, pp. 44-45.

85. See U.S. Commission on Civil Rights, Field Trip Summary: Rocky Boy's and Fort Belknap Reservations (Aug. 9-11, 1971).

86. Bickel, op. cit., note 74.

87. Ibid., p. 73.

88. Community Corrections Resource Programs, Inc., "Swift Bird Corrections Center Feasibility Study," 32 (1977).

89. Southwest Indian Report, op. cit., note 37, p. 43.

90. According to Gary F. Jensen and Joseph H. Strauss, "Crime, Delinquency and the American Indian," p. 2, in alcohol-related offenses the Indian arrest rate is 7 to 22 times greater than the arrest rates for black or whites in urban areas.

91. Minnesota Advisory Committee to the U.S. Commission on Civil Rights, "Bridging the Gap: The Twin Cities Native American Communities," 62 (1975).

92. Notes and Comments, "American Indians Imprisoned in the Oklahoma Penitentiary: A Punishment More Punitive Than Torture," 2 American Indian Law Review, 85-99, 88 (1974).

93. "Corrections in South Dakota," John Howard Report (1975). This is in comparison to a 25 percent recidivism rate for non-Indians.

94. Act of May 28, 1830, 4 Stat. 411.

95. U.S. Department of Justice, Report of the Task Force on Indian Matters, October 1975, p. 23.

96. 25 USCA §§ 450 et seq. (Supp. 1976).

97. American Indian Policy Review Commission, "Final Report I," May 17, 1977, p. 143.

98. American Indian Policy Review Commission, "Law Consolidation, Revision, and Codification I," Final Report Task Force No. 9, September 1976, p. 27.

99. Act of August 15, 1953, ch. 505, 67 Stat. 588-590 (now codified as 18 U.S.C. § 1360 and other sections scattered throughout 18 and 28 U.S.C.).

100. See Senate Committee on Interior and Insular Affairs, "Background Report on Public Law 280," 94th Cong., 1st Sess. 12 (1975); and House Concurrent Resolution 108 (1953).

101. These states were Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin; 18 U.S.C. § 1162(a) (1970).

102. Nevada, Florida, Idaho, Washington, Montana, Arizona, South Dakota and Utah have assumed jurisdiction in this manner.

103. State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation, 552 F. 2 1332 (1977); appeal granted, Docket No. 77-388 (February 1978).

104. 25 U.S.C. §§ 1321-26 (1970). The amendments did not, however, allow tribes to initiate the retrocession.

105. 18 U.S.C. § 1162(a) (1970).

106. American Indian Lawyer Training Program, Manual of Indian Criminal Justice, p. 105 (1977).

107. Ibid., p. 106.

108. Special Report No. 1553, 89th Congress, 2nd Session. 8-9 (1966).

109. Ex parte Crow Dog, 109 U.S. 556 (1883).

110. See Bryan v. Itasca County, 426 U.S. 373 (1976).

111. Justice and the American Indian, Vol. 1, pp. 7 and 9.

112. Ibid., p. 13.

113. Justice and the American Indian, 5 Vols. (Washington, D.C.: National American Indian Court Justices Association, 1974), Vol. 5: Federal Prosecution of Crimes Committed on Indian Reservations, pp. 11-12.

114. AIPRC, Final Report, p. 152.

115. AIPRC, Final Report, pp. 156-58.

116. Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. Sec. 1162, 28 U.S.C. Sec. 1360.

117. 18 U.S.C. 1153.

118. AIPRC, Final Report, pp. 162-3.

119. Justice and the American Indian, op. cit., note 106, p. 30.

120. American Indian Policy Review Commission, "Report on Federal, State and Tribal Jurisdiction, " Final Report Task Force No. 4, 1976, p. 47: "A contrast is seen between the Wanblee incident, where [an Indian] person was killed and shooting was allowed to continue over a period of 2 days, and the incident in July when 2 FBI agents were shot and nearly 300 combat-clad agents, along with the trappings and armament of a modern army, were brought in 'to control the situation and find the killers.'"

121. American Indian Policy Review Commission, "Tribal Government," Final Report Task Force No. 2, 1976, p. 33.

122. Indian Self-Determination and the Role of Tribal Courts. A Survey of Tribal Courts Conducted by the American Indian Lawyer Training Program, 1978.

123. Ibid., 11.

124. Research Document in Support of the Criminal Court Procedures Manual: A Guide for American Indian Court Judges (Washington, D.C.: National American Indian Court Judges Association, 1971), p. 159.

125. Ibid., note 117, p. 159: "Appeals from the tribal courts to the tribal appellate courts are extremely rare, almost to the point of being nonexistent. The

structure for appeals to an appellate court exists in the tribal laws and ordinances. However, in almost every instance, appointments had not been made by tribal councils to fill the positions on the appellate courts. This was attributed to an absence of qualified persons to so appoint. A great deal of confusion exists as to whether or not the original tribal judge can even be a member of the appellate court on an appeal of a case which originated in his court."

126. Justice and the American Indian, op. cit., note 106, p. 52.

127. Indian Self-Determination and the Role of Tribal Courts, op. cit., note 115, pp. 47-8.

128. AIPRC, Task Force No. 4, op. cit., note 113, pp. 37-38.

129. Oliphant v. Suquamish Indian Tribe, Docket No. 76-5729.

130. Justice and the American Indian, op. cit., note 106, p. 53.

131. 25 U.S.C., §§ 1301 et seq. (1970).

132. Justice and the American Indian, op. cit., note 106, p. 55.

133. Act of April 11, 1968, 82 Stat. 78, 25 U.S.C. §§ 1301-1303 (1970).

134. See, Special Report No. 841, 90th Cong., 1st Sess. 6 (1967).

135. 25 U.S.C. 1302 (6).

136. 25 U.S.C. 1302 (7).

137. 25 U.S.C. 1303.

138. Santa Clara v. Martinez, 76-1615.

139. Ibid.

140. Indian Self-Determination and the Role of Tribal Courts, op. cit., note 115, p. 48.

141. Ibid., p. C-9.

142. Ibid., p. 79.

143. AIPRC, op. cit., note 114, p. 46-7.

144. Ibid., p. 34.

145. Felix Cohen, Handbook of Federal Indian Law (Albuquerque: University of New Mexico Press, 1971), pp. 145-49.

146. AIPRC, op. cit., note 114, p. 35.

147. AIPRC, op. cit., note 114, pp. 28-9.

148. Research Document in Support of the Criminal Court Procedures Manual, op. cit., note 117, pp. 159-60: "Great conflict exists between certain tribal courts and the Bureau of Indian Affairs Police, specifically in the areas such as ultimate disposition of particular cases; carrying out of court orders; serving of warrants; and the control of evidence. One of the greatest areas of conflict exists regarding the control of court funds derived from the collection of fines. It is urged by some that the BIA exercises control over ultimate disposition of such funds to the distinct disadvantage of the tribal courts. Such BIA control of court funds thereby prevents the court from upgrading itself in many ways."

149. Ibid., note 117, p. 160: ". . . there is a general lack of court office and library facilities for tribal judges. In a number of cases, court is actually conducted right next to the police radio in the police office or immediately adjacent thereto. In some of the courts observed, the courtrooms were found to be so small as to preclude six jury members from even entering the room and staying during the course of the trial, not to mention facilitating all of the other necessary parties to a jury trial."

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CHAPTER IV

IMPACT OF CRIME AND CRIMINAL JUSTICE ON ASIAN-AMERICANS

> Mr. Lim: Yes. The impact of delinquency on the elderly and also on the businessmen in Chinatown is phenomenal. In terms of actual size and number, so few people have really affected so many in terms of business. The elderly are getting mugged by our own people, as well as other groups, because we live in the kind of housing that sets up a situation for these people to get mugged. When there was a crime committed that involved a Chinese-speaking citizen, they had to go to the computer to locate a Chinese-speaking officer; then, hopefully, he speaks the dialect that the victim speaks.[1]

A. Introduction

The alarming increase of crime in America over the last 15 years is somewhat reflected in the Asian communities and serves as the context in which this analysis of crime and criminal justice practices in selected Asian communities is made. This analysis is long overdue given the failure of social science research to address the issues. An overview of the literature reveals several interrelated reasons for this neglect.

A major reason for this neglect is that there are only a handful of studies on crime in the Asian communities. Most studies on Asians have tended to focus on employment, educational achievement, immigration, or the impact of racism. An understanding of crime in the Asian community can only be gleaned, inferentially, from these broader inquiries. There is virtually no literature that addresses crime among Filipinos, Koreans, and the recent Indochinese immigrants, or for that matter, more established Asian-American communities of citizens of Chinese or Japanese ancestry.

The few studies on Asians and crime that do exist are not particularly informative. The studies are hampered by the lack of national statistics. Since Asians comprise a small proportion of the total U.S. population, their crime rates have not always been separately reported. Thus, the traditional sources for crime statistics cannot be relied on in investigation of this topic.

Based on studies that have employed traditional sources for data, researchers have concluded that low crime rates are the single most dominant characteristic of Asian communities.

The major paradigms in studies devoted to explaining the low rates have been the culture and personality or acculturation models. It was not until the publication of Walter Beach's study in 1932 that we began to see scholarly interpretations of crime among immigrant Chinese and Japanese. Beach's *Oriental Crime in California* is based on official data from the police and the prison system for the period 1900 to 1927.[2] He compared the Chinese and Japanese across counties, age, and occupation and offered a sociological interpretation that, while varying in emphasis in later years, became the dominant paradigm in explaining the low crime rate for these two populations:

> . . . the evidence points to . . . certain aspects of culture mingling. The problem of adjustment of one culture to another inevitably illustrates the difficulties which arise through misunderstanding, and through the differences in the weight of emphasis which different forms of behavior are given to one culture as compared with another. It is well to understand that custom and law as affecting human conduct belong, in each case, to a cultural unit or whole, and criminal conduct itself must be studied in relation to the cultural background of the offender.[3]

Beach's interpretation is rather remarkable in that it represents a definite break from the theories of the immediate past--biological interpretations based upon IQ studies, the "instinct" assumption underlying Robert E. Parks's race relation studies, and the racial theories promoted by the social eugenicists.

Beach's culture conflict thesis assumes the relativity of culture, attributing criminal conduct to cultural differences. The thesis, however, is turned around in studies of Asian-American delinquency, attributing the low rate of delinquency among the children of these immigrants to the cultural values brought over by the immigrant parents. Norman Hayner, who conducted some of the earliest studies of Chinese and Japanese adolescents, asserted: "The low delinquency rate seems to be accounted for by the strong family and community organization characteristic of this immigrant group."[4] By 1938, Hayner was convinced that cultural factors explained the low delinquency rates among the Chinese and Japanese: "One of the major factors that accounts for the low rate of criminality [is] the integrated families that are characteristic not only of Japan but also of China and the Phillipines."[5] Hayner specified other factors to be filial piety, feelings of kinship, moral discipline, emphasis on courtesy, and strong parental feelings of responsibility. Helen MacGill, in a study of Chinese and Japanese adolescents in Vancouver, British Columbia, was equally convinced that the explanation was to be found in the cultures of China and Japan.

> The explanation seems to lie in the strong family system of both China and Japan, which operates to control and dominate the individual. The family structure has its roots in the religious beliefs of the two nations, for it is based upon and entrenched by ancestor worship. . . . Inculcated in the children of both nations is an extraordinary respect for parents and elders, and a strong sense of responsibility . . . .[6]

These early studies not only conveyed the impression of low crime rates among both the Chinese and Japanese, but laid the foundation for a culture and personality theory to explain the behavior and conduct of Asian-Americans. The theory assumes that the cultures of China and Japan contained the key elements that shaped and controlled the behavior of Asian-Americans and, for whatever the children achieved or failed to achieve, the strategy credited or blamed the cultural elements in the mother country.

Since World War II, research on Asian-Americans has been dominated by two theoretical perspectives: the assimilation--acculturation thesis, and culture--personality explanations. Both theses were first introduced in the delinquency literature by Walter Beach, Norman Hayner, Helen MacGill, and Arthur Lind.[7] As late as 1968, Sollengerger concluded from a study of San Francisco's Chinatown that the low delinquency rate is due to child-rearing practices, their cultural values and their family structure of Chinatown residents.[8] He also concluded that, as more and more youth assimilate American culture, delinquency will increase.

Some recent studies have noted that delinquency among Chinese youth in San Francisco, as measured by arrests, began to increase rapidly about 1965.[9] The Japanese in San Francisco, however, did not experience the same increase. Takagi and Platt[10] noted that the arrest rate of Chinese youth referred to the Juvenile Probation Department in San Francisco was the same for both the American-born and China-born youth. They argued that if the arrest rates are the same for both categories of youth, we cannot invoke the culture-conflict thesis advanced by Beach. The thesis might apply to the foreign-born, but not to the American-born.

The number of Chinese juveniles arrested has increased in recent years, but the number has not increased for the Japanese. Thus, the prediction that greater acculturation will lead to delinquency does not explain the case of the

Japanese. A case might be made that the Chinese have undergone greater acculturation than the Japanese, but this is problematic because half of the Chinese arrests were suffered by the China-born youth. This leads to the awkward proposition that, while some Chinese became delinquent through the process of acculturation, others became delinquent because of culture conflict. The proposition is awkward because, according to the culture and personality thesis, the China-born youth, being relative newcomers from a society that emphasizes traditional values, ought to be more deeply imbued with those values associated with a low delinquency rate. However, to twist and turn the culture and personality thesis does not help to explain the current relative increase of crime among Chinese youth in San Francisco.

To understand the impact of crime and criminal justice practices on Asians, one needs to move beyond culture- and personality-oriented investigations. For example, the origin and development of the laws Asians violate should be examined to determine if the problem is located in Asian behavior or the law itself; alternatively, the social realities in Asian communities that lead to the enforcement of particular laws need to be examined. What should also be taken into consideration is the "undetected" crimes in Asian communities, which is particularly relevant in the light of Asian people's reluctance to report crime to the police. A broader definition of crime is needed in order to assess whether the racially discriminatory legislation, which deprived Asians of rights and freedoms, can be considered a violation of human rights. Finally, what is needed is a discussion of how criminal justice procedures create negative images and labels which can heighten victimization and criminalization of Asian people.

This chapter will develop a line of analysis on the impact of crime on Asian communities that is different from the extant literature. The chapter consists of four major sections: The first section is a historical analysis of the Asian experience, with particular focus on how certain events affected the nature and extent of crime among Asians. The interrelation of racial antagonisms and economic conditions and the manner in which they influenced both the concrete life situations of Asians and the responses that emerged from them will be examined.

Following this historical analysis, the problem of Asian crime, as reflected in available official statistics, will be analyzed. These statistics reveal that Asian communities for the most part have been relatively crime free, the basis for much of the published studies. However, these statistics should be approached with caution, for there are limitations in employing official statistics as the sole basis of analysis. The low arrest rates and low prison commitments, for example, are not accurate indicators of crime in Asian communities, but may reflect the nature of law enforcement practices in the Asian community, which is influenced by the image that Asians are "law abiding" people. The practice of categorizing all Asians as "others" poses yet another problem in assessing the nature of Asian crime based upon official statistics.

To provide a more comprehensive analysis of crime in Asian communities, the third section examines the impact of crime in specific, selected communities: the Japanese, Chinese, Thai, Korean and the new Indochinese communities. The analysis in the latter section is based on testimonies by citizens before the NMACCJ public hearings, in-depth interviews gathered from alternative sources which include officials and community people, as well as information from newspapers and local police records.

The fourth section of this chapter discusses drug abuse in the Asian community. Again, the analysis is somewhat hampered by the lack of adequate information. For example, data on Asian-Americans are unavailable in the LEAA-sponsored Criminal Victimization Surveys, the National Prisoner Statistics, Children in Custody, and the Survey of Inmates in State Correctional Facilities.[11] However, the discussion of drug abuse among Asians is important, for it calls into question the prevailing misconception that Asian communities do not experience the problems that plague the larger society.

In general, we do not know the crime rates in the several Asian-American communities. Official statistics indicate that there is relatively little crime, a fact that, in turn, is supported by the few Asians confined in correctional facilities and the research studies that have focused on the low crime rates among the Chinese and Japanese. For example, data on Hawaiians were presented at a civil rights hearing in Washington, D.C. Those data are shown in Table IV-1. One cannot draw any conclusions about the crime rates among Asians in Hawaii based on data on the resident penal population and those on parole in the general population. If further study reveals the preliminary findings are constant then one might be able to make some statements about a crime problem among Samoans, and to a lesser extent among Filipinos.

There is, however, a serious problem in looking at criminal justice data on minorities by comparing racial categories of people with the white category serving as a normative reference. It is fruitless to make these comparisons because the racial categories of people are not comparable in their experiences nor in their resources to cope with the exigencies of life. One also cannot continue to study the criminal

Table IV-1

Population by Race of Persons Confined in Correctional Institutions

Ethnic Group	Total Population (1976)	Total/Prison (Feb. 1978)	On Parole (Feb. 1978)	Rate/ 100,000
Caucasian	230,078	50	37	37.8
Japanese	219,824	24	20	20.0
Native Hawaiian	146,291	9	5	9.5
Filipino	83,791	35	36	84.7
Chinese	35,791	6	3	25.1
Korean	10,733	2	3	46.6
Black	4,460	12	7	426.0
Samoan	3,183	21	14	1099.6
Mixed	76,324	180	125	399.6
Unknown/others*	9,283	65	73	1486.6

Source: Lawrence Koseki in Civil Rights Issues of Asians and Pacific Americans (U.S. Civil Rights Commission, Washington, D.C., May 1979).

* "Unknown/others" are not specified under Total Population. For the corrections data, they are: Portuguese, Puerto Rican, Others, and Unknown.

justice processes as operating in a political and social vacuum. The reason this perspective is inappropriate is that the implicit bias in American social sciences focuses on proportions, averages, or summaries, which do not reflect similarities as they collapse a range of differences. Put differently, an average or median says that for every rich person there is a poverty-stricken person. Thus, behind the percentages and averages reflecting the high educational attainment, occupational status and income levels of Asian-Americans, there exists criminogenic conditions among those less well endowed. Such criminogenic conditions exist in Chinatown, which is discussed in this chapter. Analogous to the rebellion in Watts that caught the country by surprise in 1965, a delinquency problem in the nation's Chinatowns was similarly unexpected. The intent in this chapter is to discuss and analyze what appears to be a contradiction--a crime or criminal justice problem in ostensibly crime-free Asian communities.

B. The Asian Experience in America

This section is a historical overview of the Asian in America. The purpose is to highlight the relationship between racism and crime. Since there already exists much literature that provides a more comprehensive account of Asian history beyond the scope of this chapter, the following history will, instead, limit its focus to selected events that took place in the Chinese, Japanese, and Filipino experiences in America. This section will analyze the forces behind these key events and interpret their significance with respect to crime and criminal justice. This interpretive history provides the perspective to understand crime and its related impact on contemporary Asian communities.

First, however, one needs to understand some terms. The terms "Asian" or "Asian-American" are relatively new ones. They were introduced on the West Coast during the student movement of the late sixties and are similar in usage to Afro-American, Native-American, Mexican, and Latino. The original use of the terms was clearly political, as they conveyed the idea of unity, reflecting certain shared experiences in America. Those who used the terms understood the necessity to transcend the prevailing ethnic and national chauvinism that tended to promote ethnic hostility.

Originally, the term Asian-American included only those representative ethnic Asians on the San Francisco State and the University of California-Berkeley campuses; that is, Chinese, Japanese, Korean, and Filipino students. As the term Asian or Asian-American came to be adopted in the larger community, Pacific Islanders (or Pacific Americans), representing Samoans, Hawaiians, Guamanians, and Malaysians, were appended, as in the acronym PAAMHRC (Pacific/Asian American Mental Health Research Center),[12] or separately identified, as in the recently issued U.S. government publication, Asians and Pacific Americans: Myths and Realities.[13] Today, the term is used to include the new Asian populations --the Vietnamese, Laotians, Cambodians, and Thais.

One cannot talk reasonably about crime and criminal justice and their impact on Asians without separately discussing the experiences of each ethnic population. Such a task goes far beyond limits imposed by a single chapter in a book, requiring, it would appear, an arbitrary decision to report on some groups and not others. The decision to report on some groups and not on others was not completely arbitrary because, to a large extent, existing data were relied upon as well as cooperation from community people who agreed to be interviewed on the topic.

1. Chinese in America

Chinese immigration to the United States began as early as 1848. Immigration rates were low in the subsequent three years; however, economic opportunities on the West Coast, and political turmoil in China, quickly led to a tremendous increase in Chinese immigration, beginning in 1852. In that year, 20,026 Chinese arrived in San Francisco. By 1880, the Chinese population in the U.S. had grown to 105,465.[14]

Upon their initial arrival, the Chinese were favorably received. Americans viewed them as quaint curiosities, who could potentially participate in every realm of American society.[15] This image was soon replaced as the concrete conditions in the economy, combined with the growing nativist feelings, resulted in strong anti-Chinese sentiments.

The Gold Rush dominated the economic context in which Chinese immigration took place. Many of the Chinese sought their fortunes by heading for the mining country. By 1854, much of the surface gold had "panned out." Small mining operations no longer produced high yields. It became evident that only with the use of heavy hydraulic machinery would mining be feasible. White miners, faced with less productive claims and threatened by competition from the Chinese and Mexicans, began to vent their anger and frustration against the Chinese through violent takeovers of the more desirable claims. It was at this time that a series of foreign miners' tax laws were enacted in the Western states. In California, the first foreign miner's tax was passed in 1850, and was followed by a series of laws which periodically readjusted the rate of the tax.[16] In 1850 all miners who were not native-born citizens of the United States were required to take out licenses for which they paid twenty dollars per month. Failure to obtain a license was punishable by expulsion from the mines, with possible fine and imprisonment. The law was initially directed against miners from Chile, Mexico, and Australia. The law was revised in 1852 to apply to the Chinese and amended in subsequent years so that foreigners who declared their intention of becoming citizens were exempted from paying the tax. The Chinese, however, were not permitted to become naturalized citizens. The tax not only drove many of the Chinese and Mexicans from surface mining claims, but it created a wage-labor force that was needed by the developing corporate mining companies.

The foreign miner's tax presented a state definition that Chinese and Mexicans were of lesser political status than whites. This classification, sanctioned by law, created the idea that virtually anything could be done to the Chinese and Mexicans with impunity. This stigma not only allowed whites to commit crimes against the Chinese and Mexicans without fear of criminal penalty, but also set an important precedent for future discriminatory legislation.

In 1854, for example, it was ruled that a Chinese person would not be allowed to testify against a white person,[17] making it virtually impossible for the Chinese to obtain due process either in cases in which they were charged with crimes or in instances when they were victims of crimes committed by whites. Though no research has been done on the effects of these laws, it could have contributed to the large number of Chinese committed to prison during the late 1800's.[18]

The rights and opportunities of the Chinese were further restricted by a variety of local ordinances. Laws were passed allowing states to withhold money from districts with integrated classrooms, thus, excluding Chinese children from public schools. In the 1870's, a number of ordinances were passed to discourage the Chinese from continuing their laundry businesses. Taxes were enacted to make it difficult, if not impossible, for the Chinese to pursue certain occupations; for example, the imposition of heavy taxes on the fishing industry that the Chinese had established.[19]

The repression of the Chinese through legislation culminated in the Chinese Exclusion Act of 1882.[20] This was the first law on the statute books of the United States restricting the immigration of an entire race. It suspended the immigration of Chinese laborers for ten years and was renewed every ten years until 1902, at which time the Chinese were permanently excluded from immigration to the United States. As an aside, the origin of the 1882 Chinese Exclusion Act is an interesting topic in the sociology of law. The government of China agreed to the legislation on the condition that the government of the United States enact legislation to prohibit Americans from trafficking opium into China. The U.S. government did so in 1886, enacting the first federal law governing the international trafficking of narcotics.[21] An examination of the political economy helps to explain the reasons for, and implications of, this law. As is well known, the Chinese were primarily responsible for the construction of the western portion of the transcontinental railroad. The need for labor led to mass recruitment of the Chinese, which explains their heavy immigration during the 1860's. When the railroad project was completed, the anticipated expansion of the economy did not occur. Instead, the influx of eastern products and massive unemployment of California workers were accompanied by a serious economic depression during the 1870's.

The unemployed Chinese sought new employment in urban manufacturing centers, agriculture, and land reclamation projects. The growing white labor movement at the time reacted strongly to these events. It charged the Chinese with unfair labor competition, intensifying the anti-Chinese sentiments. The political manifestation of this racism resulted in the passage of the Exclusion Act, forbidding the further immigration of Chinese laborers, creating for the next fifty years a male-dominated Chinese community.

How do these selected events relate to the issue of crime and criminal justice in the Chinese experience? The criminal justice apparatus explicitly designated the Chinese as politically inferior. The Chinese, under existing laws and social policies, were victimized and criminalized. Further, cruel laws were enacted which victimized the Chinese by defining their normal pursuits as crimes; for example, prohibitions against the carrying of laundry with poles, a traditional, Chinese cultural mode.

The discriminatory laws, combined with the intense racial violence against the Chinese, led to the formation of a Chinatown. The racial violence in rural areas drove many Chinese to the "safe" urban areas, where other Chinese lived. However, discriminatory city ordinances further restricted the Chinese to a circumscribed area. Without access to services in the white sections of the city, the Chinese established their own ethnic enterprises for goods and services. The same conditions giving rise to parallel business ventures in Chinatown also account for the development of illegal economies, particularly gambling, prostitution, and drugs. The conditions that resulted from racism account for crimes among the Chinese in the nineteenth century and help to dramatize how laws are employed to maintain racist ends.

The passage of the Exclusion Act had a profound effect upon the composition of the Chinese population. The end of immigration left a predominantly male Chinese population. With no opportunity to establish family life, Chinese males had to seek other avenues to occupy their time and to escape the harshness of their existence. The loneliness they faced made gambling an attractive form of entertainment and fueled the fantasy of a "big score" so they might return to China. The lack of female companionship made prostitution a thriving enterprise, and the harsh realities induced many to seek escape through the use of opium.

2. Japanese in America

The 1882 exclusion of the Chinese did not eliminate the need for labor in the developing economy of the West Coast. Japanese immigrants came to fill this need. Initially, rates of immigration were low; between 1869 and 1890, only about 200 Japanese arrived each year. By 1890, however, the immigration increased and the Japanese population grew to 24,326. The most significant period of growth occurred from 1900 to 1910, when 129,797 Japanese came to the United States.[22] As with the Chinese, much of the early immigration was predominantly male, and thus, it was not uncommon for the Japanese to engage in activities such as gambling and prostitution. As time progressed, the particular nature of the Japanese experience gave rise to a different picture with regard to crime and criminal justice.

Upon their arrival, the Japanese provided a major portion of the agricultural labor force. Working in labor gangs, moving from area to area to harvest crops, the Japanese quickly became known as a cheap, reliable, and hard-working labor force. They did not, however, remain a migratory work force for long. The Japanese took their meager earnings and used them to enter independent farming, through tenant farming and land leasing. Their reputation as hard workers actually facilitated hard acquisition, for white farmers were willing to lease to Japanese, knowing that they and their land would profit.[23] The Japanese were also able to purchase their own farms and became a major factor in California's thriving agricultural industry. Table 4-2 indicates their rise in agriculture.

Table IV-2

Growth of Japanese Farming
(in acres)

	Owned	Leased	Shared Crop
1904	2,422	35,258	19,572
1909	16,449	80,232	59,001
1919	74,769	383,287*	--

Source: Roger Daniels, Politics of Prejudice (Berkeley: University of California Press, 1972).

* Lease figure includes cropping contracts.

The establishment of independent farming as an economic mainstay represents a significant difference in the Japanese experience as compared to the Chinese. The other major difference was in the sexual composition of Japanese immigration. Unlike the Chinese, large numbers of Japanese women later immigrated to the United States. The immigration of women established family life among the Japanese. The following figures illustrate the sexual ratio in Japanese immigration. In 1900, of the 24,326 Japanese, only 985 were female. In 1910, the number of females rose to 9,087; and by 1920, out of a total population of 111,010, 38,303 were women.[24]

The fact that the Japanese were able to establish a stable independent economic base as well as a family life explains, in part, the low crime rates. The Japanese were mostly rural residents; therefore, gambling and prostitution were not as extensive as among the Chinese. Thus, family-based life produced programs and activities centered around churches, youth organizations and schools. The relatively low crime rate among the Japanese was the basis for most of the studies on Asian crime during the twenties and thirties.[25]

These studies did not, however, take into account the impact of discriminatory legislation, especially the limitation of civil liberties. When examined from this perspective, the experience of the Japanese resembles that of the Chinese.

The Japanese inherited the legacy of discrimination that developed against the Chinese. Their arrival triggered a new fear of a "yellow peril" in the minds of whites, particularly white workers who felt their economic positions might be threatened.

The first major anti-Japanese movement in 1906 centered on the issue of school segregation. White San Franciscans were fearful of having Japanese children in the same classrooms with their children, and sought to have them assigned to the existing, segregated Chinese school. This action escalated into an international controversy. As a rising world power, Japan was able to wield political clout, and a compromise between the U.S. and Japan, known as the Gentlemen's Agreement, was reached. San Francisco rescinded the order to segregate, and Japan volunteered to limit the emigration of male laborers. The agreement did not prohibit wives of resident aliens from immigration, and many Japanese women continued to come to the U.S. under the "picture bride" system.

The Alien Land Law of 1913 was the first major anti-Japanese legislation. Resulting from the growing anti-Japanese movement, this law made it illegal for Japanese aliens to own land. Though considered a political victory among nativists, the law did not prevent the Japanese from purchasing land. The Issei, or first generation Japanese, bought land but placed the title to their land in the names of their American-born children.

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Both the Gentlemen's Agreement and the Alien Land Law represented efforts to limit the freedom and rights of the Japanese. As with the Chinese, these actions served to define the Japanese as having lower political status than whites, and made them vulnerable to criminal victimization. The anti-Japanese legislation also created crimes out of previously noncriminal activity, such as owning land.

The response of the Japanese to these conditions exacerbated anti-Japanese feelings. The immigration of women through the picture bride system and the placement of land in the name of American-born children were viewed as explicit attempts by the Japanese to circumvent the laws of the land. The image of the Japanese as devious, criminally fraudulent and unscrupulous began to emerge as a stereotype.

These early events became the foundation for future discriminatory actions. In 1924, Japanese were totally excluded from immigrating to the United States. Then in 1942, the ultimate demonstration of racism occurred when 110,000 Japanese were rounded up and placed in concentration camps for the duration of World War II. In effect, an entire race was deemed a criminal threat to America, solely on the basis of its race. This massive deprivation of Japanese rights is the most blatant example of anti-Asian sentiment expressed by white society, an act which was sanctioned by the U.S. Supreme Court.[26]

3. Filipinos in America

The immigration restrictions on the Japanese in 1924, again, did not eliminate the need for cheap labor in California. In fact, with the growth of large-scale corporate farming, the need for agricultural workers was greater than ever. To fill this need, people of the Philippines were recruited for agricultural labor. Because the Philippines was a territory of the U.S., its citizens were considered "wards" of the U.S. and were exempt from the immigration laws invoked against other Asian groups. During the twenties, some 45,000 Filipinos came to the West Coast.[27]

As with the Chinese, the vast majority of the Filipino immigrants were males. Females did not come to America for several reasons. For one, many male Filipinos who did immigrate did not intend to remain in the U.S. They came to seek their fortunes and intended to return eventually to the Philippines. Second, Filipino cultural values made female emigration difficult, for women would rarely travel unchaperoned. Finally, the labor needs of agricultural interests specifically called for able-bodied men.[28]

The overwhelming male composition of the Filipino population needs to be examined as a precondition for crime and victimization among Filipinos. Whites, for example, believed that the absence of Filipino women would lead the men to lust for white women. This led to vigorous enforcement of anti-miscegenation laws. With no opportunity for establishing female relationships, Filipino men engaged in marginal activities. The phenomenon of taxi-dance halls, where the men purchased tickets for a two-minute dance, became a popular pastime for Filipinos. Prostitutes did a lively business among Filipinos.

In addition to the problems associated with a male-dominated population, the nature of Filipino labor-force participation had helped to create negative racial images. Their role as migratory agricultural workers placed Filipinos in a perpetual state of poverty and instability. This facilitated images of Filipinos as dirty, inferior beings, who are viewed with suspicion by the larger society. The state of poverty also led Filipinos to seek their fortunes through gambling. Many stories on Filipino life depict Filipinos as spending their entire seasons' earnings in the gambling dens of Little Manila in Stockton.[29]

The histories of only three Asian populations have been discussed because of the availability of voluminous historical material. While it is true that Koreans and Hindus also came to the United States as early as the turn of the twentieth century, very little is known about their early histories. In the remaining sections of this chapter, crime and its impact in the Japanese and Chinese communities are discussed in depth, but crime in the new Asian communities is discussed briefly, specifically, in the Korean community whose population has experienced phenomenal growth since 1965; in the Thai community, a little-known community in Los Angeles; and in the Indochinese refugee community, the latest population from Asia to settle in the United States.

4. Summary

These events in the experiences of Asians in America illustrate how crime and the operation of the criminal justice system has historically affected the lives of Asian-Americans. We need to look beyond the mere descriptions of historical events to examine how these events came about, how Asians responded to them, and how crime and criminal justice practices impinged on Asians' lives. Two considerations emerge from this discussion. First, the analysis of crime cannot be limited to studying attributes of the offenders who get caught up in the criminal justice system. Traditional social science research has focused on crime, as defined by law. While this is valid, there are other aspects of crime

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that should be pursued with equal vigor. For example, discriminatory legislation had serious consequences for Asians as it deprived them of their basic civil liberties. The law itself cannot be accepted uncritically; laws were enacted to criminalize the normal pursuits of Asians. Moreover, the laws legitimized the idea that Asians are inferior to whites, thus creating negative images of Asians which made them vulnerable to criminal victimization.

Second, the nature and impact of crime varied enormously among Asian groups, depending on the sexual composition of the immigration population and its participation in the labor force. The Japanese, for example, because they were able to establish a stable economic base and family life, experienced lower crime rates than the Chinese and Filipinos, who were predominantly single males and waged laborers. Thus, two focal points are needed in studying crime and its impact in Asian communities. First, the class of recent immigrants must be examined to fully understand the present structure of Asian communities; and second, the communities' effects upon crime and criminal victimization must be analyzed.

C. Official Statistics on Asian-American Crime and Victimization

The critical role that official statistics play in the analysis of crime in general, and for Asians in particular, requires an examination of the nature of Asian crime as revealed in these statistics. The following discussion serves a two-fold purpose. It attempts to present the extent of Asian crime as recorded by official agencies; concomitantly, it tries to point out the limitations inherent in these statistics.

On a national level, data on crime and criminal victimization of the Asians in the United States are sparse. As noted earlier, data on Asian-Americans are unavailable from ordinary, primary and useful sources. One can, however, refer to Crime in the United States, Uniform Crime Reports, issued annually by the Federal Bureau of Investigation. In the relevant sections of that report, one can retrieve data on the total number of arrests nationally by race and offense. The five major racial breakdowns are "White," "Negro," "Indian," "Chinese," and "Japanese." Additional breakdowns are by age and location. Thus, to understand crime and its impact upon Asian-Americans, it is necessary to visit each of the major cities in the United States to obtain something as basic as arrest data. Even visiting local jurisdictions at the state, county and municipal levels requires the cooperation of officials, something that is not always easy to obtain.

State and local criminal statistics provide more information about Asian crime, but even with these data there are certain limitations. For example, the Asian Task Force of the Los Angeles Police Department was not able to provide summary statistics on Asian-American crime and delinquency in Los Angeles. While other jurisdictions, such as San Francisco, do produce annual statistics, they are often for internal use only.

The best information available comes from the California Department of Corrections, the California Department of the Youth Authority, and the California Bureau of Criminal Statistics. While the reliance on California sources poses some problems in making national generalizations on Asian-American crime and delinquency, it should be noted that 36 percent of all Japanese in the United States, 39 percent of all Chinese, and 40 percent of all Filipinos live in California.[30]

The most complete data on Asian-American crime are collected by the California Department of Corrections, the state's adult prison system. The data are published annually, going back to 1854.[31] In 1973, in an issue of California Prisoners, the data on male felons received from courts show 11 Chinese, 11 Filipinos, and 4 Japanese. In 1972, there were 13 Chinese, 6 Filipinos, and 9 Japanese. There were no Chinese or Japanese adult females committed to prison in 1972 and 1973. Two Filipino women were committed during these years, one in each of the two years.

Table IV-3, summarizes the penal commitment of Asian-Americans in California since 1945. Among Filipino and Japanese adult males, there is no discernible pattern of penal commitment. There was a relatively larger number of Chinese penal commitments during the fifties, but the numbers decreased in the subsequent years. Perhaps what is most striking about Table IV-3 is the apparently "crime free" behavior among Asian-American adult females.

The California Department of the Youth Authority, the sister agency of the California Department of Corrections, also issues an annual report, but it has only recently identified Asian-American commitments in youth penal facilities. Unfortunately, the report uses the category "Asian" to describe the Chinese, Japanese, and Korean, so there is no way of comparing the three ethnic groups. The 1976 annual report shows 25 Asians committed in 1976 plus 7 Filipinos. No Asian-American female was committed in that year.[32]

The Bureau of Criminal Statistics of the California Department of Justice monitors and collects statistical data on crime and delinquency from the police departments,

Table IV-3

Asian-Americans Committed to California Prisons, 1945-1973

	Men			Women		
Year	Chinese	Japanese	Filipino	Chinese	Japanese	Filipino
1945 to 1949	60	6	80	-	-	-
1950	14	5	10	-	-	-
1951	33	5	17	-	-	-
1952	35	7	12	3	-	-
1953	27	1	13	-	-	-
1954	44	6	7	-	-	-
1955	22	1	13	-	-	-
1956	19	4	9	-	-	-
1957	23	5	9	-	-	1
1958	10	7	15	-	-	-
1959	6	10	29	-	-	2
1960	8	6	12	-	-	-
1961	10	5	10	-	-	1
1962	8	3	13	-	-	-
1963	8	8	12	1	1	1
1964	2	3	9	-	-	1
1965	5	1	8	-	-	-
1966	2	7	9	-	-	2
1967	8	3	5	-	-	-
1968	12	3	10	-	-	1
1969	8	5	8	-	-	-
1970	5	7	12	-	-	2
1971	8	5	14	-	-	-
1972	13	9	6	-	-	1
1973	11	4	11	-	-	1

Source: Adapted from California Prisoners, Department of Corrections, Sacramento, California.

sheriff's offices, and the county-operated juvenile and adult probation departments. The units report data on race and ethnicity, but because of the small number of Asian-American offenders, they are collapsed into the category "other" in the Bureau of Criminal Statistics' annual report called *Crime and Delinquency in California*.[33] The detailed data collected by the reporting agencies, including information on race, while they disappear into the "other" category in California's annual reports, reappear in the U.S. *Uniform Crime Reports*.[34] For example, one can retrieve information on the number of Asian-Americans arrested for a given offense:

Table IV-4

1971 Arrests and Citation of Male Juveniles by Race

Offense	White	Black	Chinese
Robbery	8%	22%	20%
Aggravated Assault	8	10	16
Assault - All Other	14	15	12
Burglary	34	35	26
Grand Theft	6	14	--
Auto Theft	30	3	26
TOTAL	100%	99%[a]	100%
N	(985)	(1309)	(114)

[a] Error due to rounding percentage.

Note: There was no arrest of Chinese for homicide or rape in 1971.

Source: Adapted from an Asian-American Studies class project paper, University of California, Berkeley (no date).

It is evident that even the best available data contained in official crime statistics provide little substantive information on the nature and impact of crime and victimization in Asian communities. The focus on prison commitments represents but a fraction of actual criminal offenses. The practice of lumping Asians together as others further distorts the picture.

The limitations of official crime statistics require the use of alternative methods to analyze the nature of Asian crime. The following section presents an alternative account of Asian crime, based on the informed opinions of people in Asian communities, who testified before the National Minority Advisory Council on Criminal Justice.

D. Crime and Delinquency in Contemporary Asian-American Communities

This section examines the impact of crime, delinquency, and criminal victimization in selected Asian-American communities.[35] The separate analysis of Asian communities allows us to highlight the tremendous variations among the several Asian groups, with respect to the issue of crime. As in the historical overview, the analysis of crime will be done by examining the nature of immigration, participation in the labor force, and the response of Asians to the conditions that characterize their lives in the United States.

To obtain a sense of the population of Asian-Americans and Pacific Islanders in the United States, one can examine the data presented before the U.S. Civil Rights Hearings on Asian-Americans in May of 1979.[36]

Table IV-5

Asian-Americans and Pacific Islanders in the United States (Estimated population in 1979)

Chinese Americans	750,000
Japanese Americans	600,000
Korean Americans	400,000
Filipinos and Filipino Americans	250,000
Indochinese (all groups)	200,000
Pacific Islanders	100,000

These population estimates cannot be taken seriously, as an HEW report based on 1970 census data indicate that there were 591,000 Japanese and Pacific Islanders, and the other Asian categories have experienced heavy immigration since 1970.

Presented in Table IV-6 is the 1970 geographic distribution of Asian-Americans based upon Standard Metropolitan Statistical Area with over 5,000 or more members of that ethnic group.

1. The Korean Community

What is generally not known, and certainly not reported in published accounts, is the existence of a large Korean population in the United States. Interviews with the Los Angeles police, county officials, and members of community organizations contributed to information on the subject. It is difficult to ascertain the exact numbers of the Korean community, except for the publication of a recent sociological study of petty entrepreneurship in the Korean community,[37] but no published data on Korean-Americans exist.

Table IV-6

Geographic Distribution of Asian-Americans

	Japanese	Chinese	Filipino	Korean
Anaheim/Santa Ana/ Garden Grove	10,700			
Chicago	15,700	12,000	11,500	
Denver	5,600			
Fresno	5,600			
L.A./Long Beach	105,000	41,500	32,000	9,400
New York	16,600	77,100	12,500	4,700
Sacramento	12,000	10,500		
San Diego	7,600		15,000	
San Francisco/Oakland	33,500	88,400	44,300	
San Jose	16,100	8,000	6.700	
Seattle/Everett	14,000	7,700	7,700	
Honolulu	169,000	48,900	66,600	8,900
Boston		12,100		
D.C./Md./Va.		7,800	4,600	
Norfolk/Portsmouth, Va.			5,500	
Salinas/Monterey			6,100	

The 1970 U.S. Census reported 70,000 Koreans living in the nation. In 1978, the Korean population was estimated to be nearly 260,000, with about 100,000 in the city of Los Angeles, concentrated along a twenty-block strip on Olympic Boulevard from Vermont to Crenshaw Avenues. Dr. Samuel Rhee, of the Los Angeles Mayor's Office for Youth Development, reports that the Koreans are disproportionately young; 41.5 percent are below age 25, and 87.3 percent are below age 45. An estimated 5,000 Korean youngsters are enrolled in the Los Angeles public schools.

Although Korean-Americans are highly educated as a group, most have been unable to find employment commensurate with their education. While the language barrier accounts for some of this, many Koreans in Los Angeles have opted for self-employment. There are 4,500 small businesses, some 1,200 of which are liquor stores and restaurants. An unspecified number are self-employed as gardeners and janitors. The women are reported to be employed mostly in the garment industry.[38]

In sharp contrast to the experience of the recent Chinese immigrants who have settled in established Chinatowns, the Koreans have literally created a new community by transforming the existing storefronts and office buildings into businesses catering not only to the Korean-American trade, but also to increasing overseas trade with Korea. The phenomenon of self-employment or entrepreneurship among Asians needs to be examined in some detail because the ideology and values associated with it might be key determinants of the low crime rates among Asians, that is, it is a conservative ideology that promotes traditional values.

The phenomenon of self-employment among earlier Asian immigrant groups (the Chinese and the Japanese), and now among the new Korean-Americans, has been explained by sociologists as a phenomenon of a middleman minority,[39] which is to say that under certain conditions, a minority group comes to occupy a higher niche in society. The middleman minority possesses economic resources out of proportion to its numbers, but its members occupy a relatively low status with respect to political power and social privileges.

The structure of the theory is limited in scope as it purports to apply to classes of immigrants who did not intend to remain in the United States; for example, the sojourner, who comes to make money and then returns to the mother country. As far as can be determined, the new Koreans intend to remain permanently in the United States.

There are other problems with the theory. While earlier Asian immigrant groups were able to claim territories during a period when there was relatively open geographic space, how did contemporary Koreans manage to obtain geographically bounded housing and places of business in an already developed urban space? Moreover, the small businesses of the Koreans, including the activities of the self-employed gardener, are commodity redistribution, which can only be understood by examining what Braverman calls "the universal market."[40] "The first step in the creation of the universal market is conquest of all goods production by the community form, the second step is the conquest of an increasing range of services and their conversion into commodities, and the third step is a product cycle which invents new products and services . . . ."[41]

A more persuasive account of petty entrepreneurship among the new Korean immigrants can best be understood by examining not only Braverman's analysis of the changing occupational structure in the United States, but also Harvey's work on the political economy of urban space.[42]

Moreover, the influence of religion plays an important role in the formation of a new racial community.[43] The internationalization of capital has apparently threatened the educated class in Korea, which might be related to that society's need to produce technically-oriented workers, thus profoundly altering the traditional institutions (colleges and universities) to meet the needs of commerce and technology. The significance of this social dislocation lies in the number of doctorate degree holders (in Philosophy or Divinity) who have emigrated from Korea. There are more doctorates in the Korean population in the United States than in the other Asian groups combined; large enough that they have formed a national organization called the North American Association of Christian Scholars.

The Korean intellectual class in America wields an enormous amount of influence that stems from the prestige and privileges traditionally accorded the literati class, learned in calligraphy, poetry and art. The intellectuals produce a large number of publications--books, pamphlets, newsletters, journals and newspapers, which are widely consumed given the high literacy rate among the new immigrants. The publications focus upon issues in Korea, major themes being the "unification of Korea" or "human rights and democratic elections" in Korea. The writings emphasize nationalism and Christianity, revealing the intellectual's hope of someday returning to the mother country to regain the privileges once enjoyed.

In the Korean community, the preacher is the one person who comes closest to approximating the standards of the literati class. There are officially 100 Korean Protestant churches in the city of Los Angeles alone, and about three times that number if congregations headed by lay ministers are included. The ministers are mostly Presbyterians and, to a lesser extent, Methodists. The lay preachers are graduates of Korean colleges, having obtained what would be equivalent to a bachelor's degree in theology, while the ministers of churches have had three years of additional work in a theological seminary in the United States.

The key to understanding the social and economic organization of the Korean community is the lay preacher. He is the modern day comprador, serving as the unofficial immigration officer, the welfare agent, the employment counselor, the family advisor, and the investment counselor. Each lay preacher has a congregation of ten to fifty families. Prayer meetings are held daily early in the morning, and the successful preacher recognizes the importance of audience participation, rousing songs that generate enthusiasm and zeal to express devotion.

The prayer meetings are held in the apartment building owned by the lay preacher, purchased by offerings that come to 10 to 15 percent of the annual income of each family. The large offerings not only are a demonstration of one's devotion, but support the intellectual activity of the preacher, which may take the form of writing books and articles, collecting ceramics and art works, and managing the economic interests of the group.

Each congregation is an economic group as well as a religious unit. The preacher organizes the pooling of resources to float substantial loans to purchase small businesses and property for the group. In this way, many of the storefronts along Olympic Boulevard in Los Angeles, and the apartment buildings behind them, were acquired by Koreans. The larger congregations represent, in some instances, the merger of smaller groups. Whether the mergers are based on economic or spiritual grounds is not clear. Thus, concealed from view, behind the day-to-day proletarian work, is a version of communal Christian capitalism, which raises serious questions about the theory of a middleman minority.

While the police and other sources can reveal the extent and quality of crime and victimization in these new racial communities of Southeast Asians, a deeper analysis needs to be done in order to understand the immigration and settlement patterns; the basis for the economic and political organizations in these communities; and how crime, criminal victimization, and criminal justice practices vary, depending upon the structure and cultural patterns in these communities. For example, self-employment among Koreans is directly related to their victimization by criminals. According to informants, many Koreans are victimized by unscrupulous real estate agents who sell income property or "mom and pop" stores and other small businesses in high crime areas at inflated prices. A police officer noted that many of these small store owners are then victimized by armed robbers, extortionists, and vandals. The victims are reluctant to press charges for fear of retaliation. Fellow Koreans also victimize these small business men and women by passing fraudulent checks knowing that the victim will not file a complaint.

Sporadic conflicts among the Korean youth--some have called it gang activities--are explained by loyalties and ties resulting from peer relations developed in school. Unlike other immigrant communities which emphasize family and extended kin relations, religion, or prefectural origin, Koreans apparently place greater value upon ties developed in the schools. These values have been apparently transplanted to the United States and at times have erupted into group conflicts and have been mistakenly attributed to gang-related activities.

The police, however, are of the opinion that school ties from Korea lead to obligatory and reciprocal relations in the

United States, requiring a small businessman to hire a former classmate. Although the economic aspect of "organized crime" in the Korean community is not known, it is an open secret that a group of "thugs" in the Korean community make certain that the retail outlets do not engage in price cutting or other competitive practices. It is not clear whether thugs are retained to enforce obligatory relations, such as the hiring of a former schoolmate. According to informed sources, the thugs operate more like a syndicate which controls the distribution of commodities to legitimate business, and who operate in the irregular marketplace by loan-sharking. Both police and workers in community organizations reported their suspicions in these matters.

Social scientists, impressed by the high percentage of self-employment among Asian-Americans, have focused on cultural factors, such as the rotating credit associations, to explain the origin of business capitalization.[44] The underside of Asian-American life, including alleged loan-sharking in the Korean community, the recent studies showing the enormous profit accumulated by Japanese pimps,[45] and the financial operations of the pre-World War II Tokyo Club (a gambling syndicate with branches throughout the western region of the United States)[46] suggest that profits from the irregular marketplace are linked to legitimate enterprises. This is not unique to Asian-Americans, as a recent study of early life in the Jewish community revealed similar activities.[47]

What all of this suggests is the need for ongoing research and studies of the several Asian-American communities, examining factors and concepts other than cultural factors transplanted from overseas.

2. The Japanese Community

The Los Angeles/Long Beach area has the largest Japanese population on the U.S. mainland, some 105,000 according to the 1970 census. The Japanese national is sociologically distinguishable from the Japanese-American in occupation, residential pattern, language and lifestyle. One of the difficulties in discussing race and crime is that a given racial population, like the Japanese, is not socially and culturally a homogeneous population of people. As noted in the historical overview, the Japanese first came to this country around the turn of the twentieth century. The Japanese make the distinction between generational groups so that the immigrants are referred to as Issei, literally, the first generation; the children of the immigrants are referred to as Nisei or the second generation; and the children of the Nisei are called Sansei or the third generation, and so on. The Issei, Nisei, Sansei, and so on, are sociologically distinguished from the newcomers, or war brides, that came to the United States after the several Asian wars beginning with the end of World War II. The newcomers are also socially and culturally distinguished from the Japanese nationals, the employees of Japan-based multinational corporations. The Japanese nationals are referred to as "kaisha" people or, literally, corporate representatives. The latter category of Japanese is a fluid population and there are no estimates on their number except to note that they are concentrated in urban centers of trade.

In recent years, for example, the Japanese community has been invaded by Japanese nationals and their employers, the Japan-based corporations. The nihonmachi (Japan-towns) in Los Angeles and San Francisco have been completely transformed from "ethnic" communities serving its residents to corporate centers of trade.

The Japanese nationals are typically single, male adults, and in those cases where there is a family unit, the children tend to be quite young. Since the Japanese national is sent to the United States for short-term assignments, he does not experience the usual problems of the immigrant in employment and housing. Problems in social adjustment do not affect the community because there is no long-term commitment to stay in the United States.

There is some crime reported among Japanese nationals, but the criminal victimization of this group has received greater attention by the press and the police. Since there are a large number of single, adult males, they have been especially vulnerable to victimization by prostitutes who work in pairs. According to the Los Angeles Police Department, while one woman engages the victim in a sexual act, another steals the victim's wallet or other personal possessions. The victim sometimes reports the crime to the police, but convictions are rare because the victim is a transient or is too embarrassed to testify in court.

As is the case with most tourists traveling abroad, the Japanese nationals are frequently victimized by unscrupulous merchants selling shoddy merchandise. A member of the Asian Task Force (a special unit of the Los Angeles Police Department) relates an incident where a victim purchased what he believed to be diamonds. The victim returned to Japan and some months later took the diamonds to a jeweler. To the victim's dismay, he learned they were fakes.

Historically, official crime and delinquency rates have been low among Japanese-Americans. Table IV-3 confirms this conclusion, as the number of Japanese committed to prison equaled no more than ten persons per year for the past thirty years. The low crime rate among the Japanese (and Chinese) has drawn the attention of scholars, leading to several studies conducted over the years that attempted to identify cultural and social factors associated with an apparently crime-free community. However, members of community organizations vehemently deny the myth of a crime-free community, pointing to recent robbery-murders committed by Japanese and drug abuse among Japanese youth. The Los Angeles Police Department seems to be concerned about particular types of crime and criminal victimization, rather than a crime wave in the Japanese community.

One type of crime that is increasing alarmingly in the Japanese community is muggings and assaults on the Japanese elderly. The elderly are the original immigrants, the Issei, now in their late seventies, eighties, and nineties. While some are able to speak English, the majority have retained their old ways--independence and self-reliance. Census data support this portrayal of the Issei.

The Issei enjoy longevity. The census data show that there are more Japanese aged 65 and over than among the Chinese. For example, .075 percent of Japanese males and .084 percent of the Japanese females are aged 65 and over. Among the Chinese, the percentages are .067 and .056, respectively.[48] The census data indicate that the elderly Japanese over 65 continue to be active in the labor force: 34.2 percent of Japanese males and 15.3 percent of the females, compared to 23.6 percent and 11.1 percent among the Chinese.[49] One might conclude from these data that the greater number of Japanese elderly and their active life place them in greater risk situations.

A contributing factor to the criminal victimization of the Japanese elderly is urban renewal and the invasion of the Japan-based corporations which have destroyed the community characteristics of nihonmachi (Japan-towns). In the past, the social, cultural, and religious activities of the Japanese were self-contained in a geographically bounded and racially homogeneous area. When the Japanese residents are forced out, they must find housing in distant parts of the city, and must rely on public transportation to Japan-town for their ethnic grocery shopping, entertainment and church-related activities. According to the police, the muggings and armed robberies of the elderly Japanese occur at bus stops or on sidewalks near the victims' destinations. Trips to Japan-town call for cash transactions, rather than the use of credit cards or checks, and this fact makes the Japanese elderly a favorite target for victimization.

Japanese war brides from the several Asian wars require separate discussion because of their unique problems. Their numbers in the population are difficult to gauge, but one way of estimating the number is to examine the age distribution of the Japanese in the United States by sex. The relevant census table shows the sex distribution to be the same to age 20. Females exceed the number of males beginning in the 20 to 24 age range to age 49. To put it differently, there are 117,800 Japanese males aged 20 to 49, and 161,800 females.[50] One might tentatively conclude that the difference of 44,000 consists of newcomers, mainly brides of American servicemen.

The newcomers are also sociologically distinct from the numerically dominant Japanese population consisting of the Nisei and Sansei, second and third generation natives. There is virtually no social intercourse between the newcomers and the dominant Japanese population; thus, the social problems among these newcomers--neglect, wife abuse, nonsupport of minor children and their exploitation--receive very little attention from the larger Japanese community. The International Institute in Oakland, California, now sponsors a newcomers program, including the service of a social worker. From this source, it is clear that these women experience problems, some of which are criminal, such as wife battery and nonsupport of minor children on the one hand, and on the other, their involvement in petty theft, prostitution, and occasionally, child abuse. The latter offenses are considered crimes of moral turpitude which result in additional problems with immigration authorities.

The exploitation of these newcomers occurs in the kind of work available to them as waitresses and hostesses to lend oriental authenticity to resturants and clubs. The businesses cater to Japanese-nationals and work is typically nonunion: the workers are poorly paid, receive minimal fringe benefits, and have no mobility.

On the other hand, the numerically dominant Nisei and Sansei dominate the social and political structure of the community. It is the Nisei who have been lauded for their educational and occupational achievements, a legacy which the Sansei seems to be currently continuing. The relative success of the Nisei makes them, according to the Los Angeles Police Department, prime targets for fraudulent investment schemes. From time to time, Nisei have been swindled out of large amounts of money but have been reluctant to press charges because of embarrassment to admit that he or she had been taken. Some recent fraud cases that the police are aware of involved the "pyramid scheme" and a multimillion dollar real estate venture. In both cases, thousands of dollars were lost by the investors.

The police feel that crime among the Nisei and Sansei is not a major problem except for an occasional armed robbery, gambling at Mah Jong parlors, and from time to time, their victimization by investment schemes. Thus, the belief persists that the Japanese-American community is relatively crime free. How, then, does one reconcile the "officially" low rate of crime with the belief among community people that there is crime and delinquency in the Japanese community?

One approach is to examine self-reported delinquency studies. Researchers administer a questionnaire to individuals who indicate the character and frequency of any illegal behavior they may have engaged in during the past year. Two relatively recent studies included Japanese youth in their sample. Chambliss and Nagasawa[51] found differential rates of police arrest and self-reported behavior among white, black, and Japanese high school students. The official arrest figures were 11 percent for whites, 36 percent for blacks, and only 2 percent for the Japanese. On self-reported behavior, the investigators found 53 percent among the whites, 52 percent among blacks, and 36 percent among the Japanese. From these findings, the researchers concluded that the Japanese manage to avoid entanglements with the law because of the belief among police that the Japanese are generally law-abiding citizens, that the nature of their offense is less visible, and that Japanese youngsters tend to exhibit the proper demeanor when confronted by authority figures. Although the 36 percent self-reported behavior among Japanese boys is lower than the percentages for whites and blacks, it is considerably higher than the official arrest figure of 2 percent.

Mitchell investigated Berkeley, California, high school students, examining official records, school misconduct files, and the results from a self-reported delinquency questionnaire.[52] The findings essentially duplicated the Chambliss and Nagasawa study, which showed that whites and blacks had considerably higher official and self-reported law breaking behavior than the Japanese. These studies explain the difference between what the police and community workers report about crime.

Harry Kitano has conducted several studies of Japanese crime and delinquency. The findings are summarized in his book, Japanese Americans: The Evolution of a Subculture.[53] Based upon Uniform Crime Reports, Kitano compared arrest rates of selected ethnic groups in the United States for census years 1940 to 1960. The findings confirm the general belief of the low crime rate among the Japanese.[54] Kitano also studied probation referrals in Los Angeles County.[55] He examined both adult and juvenile referrals from 1920 to 1960, and by calculating age-specific rates found that the adult rates peaked in 1940 (149 referrals per 100,000 Japanese, dropping to 111 per 100,000 by 1950). For juvenile probation referrals, the rate peaked in 1930 at 300 per 100,000 population; the rates dropped in the following decades, but peaked again in 1960 with 450 referrals per 100,000 population. While these rates appear to be high, they are by comparison three and one-half to four times lower than among non-Japanese. Kitano correctly concludes that the rates peaked during periods when the Japanese generations, the Nisei and Sansei, were in their adolescence, confirming the generalization that crime tends to be a phenomenon of the adolescent period.

Kitano, among others, has predicted that, as the Japanese become more acculturated, their criminality would begin to approximate that of the larger society. While the task of prediction in the social sciences is at best speculative, it is likely that so long as the Japanese do not experience the miseries of poverty and the World War II levels of racism do not recur, crime and delinquency are not likely to become a serious problem in the Japanese community, for race and poverty are the two factors that account for most of the variation in crime rates.

3. The Thai Community

The Thais are a relatively new group of people to settle in Los Angeles. Not much is known about the Thais, although a social service center exists for this group. It is estimated that there are anywhere from 15,000 to 25,000 Thais in the Los Angeles area, mostly in Hollywood. Most Thailanders came to the United States as students. Many of them desire to remain in the country because of the higher living standards in the United States, the availability of employment and the instability of the political situation in their homeland.

The desire to remain in this country leads to a violation of the immigration laws when their student visas expire. This situation contributes to the manufacturing and dispensing of fake "green cards," which cost anywhere from $75 to $2,000, depending upon the quality of the cards. The demand for green cards is not limited to Thais, as illegal immigrants generally support, what is understood to be, a lucrative and thriving market.

Law enforcement is aware of the market in illegal green cards. Some recent shootings and killings of Thais are believed to be related to a power struggle for control of this market. The police also suggest that the Thai community might be the conduit for some high grade heroin that has recently appeared on the streets. According to the Los Angeles police, the drug is clearly identifiable as heroin from the Golden Triangle. However, there is no hard evidence to support these suspicions.

The Thais started to come to the United States around 1960, some at the behest of the U.S. government. An unspecified number of women came to the U.S. as brides of servicemen. Of the estimated 25,000 Thais in Los Angeles, some 5,000 are permanent residents. The remainder are either tourists or students. The ratio of Thai males to females is 4 to 1.

Many of the Thais along with the other recent Asian immigrants work at menial jobs during the day, attend school during evenings to learn English, and try desperately to improve their occupational levels to qualify for permanent residence. While many Koreans have become self-employed, the Thais aspire toward technical and semiprofessional occupations--bookkeepers, accountants, draftsmen, etc.--as the most expedient way to become permanent residents.

4. The Chinese Community

The structure of the present-day Chinese community is the product of 100 years of discriminatory legislation and extralegal repression. Chinese families long separated by exclusionary laws were finally united following the liberalization of the immigration laws in 1965. By contrast to the Japanese, recent Chinese immigration to the United States consists mainly of "permanent" residents. The Chinese population increased from 237,000 in 1960 to over 435,000 in 1970. Over 122,000 of this population increase was the result of immigration.[56] The new immigrants settling in an already crowded Chinatown exacerbated the long-standing problems of inadequate housing and limited employment opportunities.

Today, San Francisco's Chinatown consists of 40,000 people compressed into an area of 42 blocks. The density of 885 people per acre is ten times the city's average. A recent social survey revealed that the average family monthly income was $311. Sixty-three percent of Chinatown's families had an annual income of $3,600. The adult unemployment rate is 13 percent and considerably higher among youth. The suicide rate is three times higher than the national average. Chinatown has the nation's highest tuberculosis and infant mortality rates, more than twice those of the rest of the city. Two-thirds of the adults have less than a seventh grade education, and the rate of substandard housing is 67 percent for Chinatown compared with a figure of 19 percent for the rest of San Francisco.[57] Of Chinatown's labor force of 8,000, 3,500 are women who work primarily in the garment industry on a piecework basis. Their wages average less than $300 a month, while the workday often exceeds eight hours.

These statistics, which are indicators of extreme poverty, reveal the grim social conditions behind the facade of a "mysterious and exotic" Chinatown displayed in travel folders put together by the San Francisco Chamber of Commerce. The bitter irony of Chinatown is captured by a community worker: "This is the only ghetto in the United States with a Grey Line bus tour."

Youths, living in any ghetto community, are vulnerable to the harsh conditions of life, which criminologists recognize as criminogenic conditions. In Chinatown, the problems are particularly acute given the large proportion of its youth population. A Health, Education and Welfare (HEW) report of Asian-Americans states: "Of all Chinese husband-wife families, 66% have children under 18 (compared to 56% for the total U.S.)."[58] Moreover, the Chinese family tends to be larger than families in the United States in general. The average Chinese family contains 4.0 persons,[59] but in a special study of Chinese youngsters referred to the Juvenile Probation Department, it was found that the family size was closer to 6.0 members.[60]

The poverty, the lack of open space and recreational areas, and the absence of supervision of these children in the home, caused by the needed for both parents to work, are factors that contribute to the difficulties of Chinese youth.

The risk of turning to crime is further exacerbated by the inability of newly arrived immigrant youth to handle their schoolwork, and if they drop out, the inability to find employment. In light of these circumstances, it is not surprising to discover that the number of arrests of Chinese youths has increased dramatically since the sixties.

The issue of crime and delinquency in Chinese communities would be relatively clear-cut if one could simply focus on how adverse economic conditions in Chinatown affect youth behavior. Unfortunately, this is not the case, for the problem has come to be defined, by the media, police, school officials and government leaders, as a crime wave involving youth gangs. The impact of this exaggerated and sensationalized image of the people in Chinatown is tremendous, and adds an entirely new dimension to the issue. The importance of this image dictates an analysis of the gang phenomenon.

The publicity based upon statements by criminal justice officials has created an image that crime and delinquency in Chinatown mean youth gangs. An example of how hearsay information leads to a statement of fact is illustrated in a recent publication by a Harvard University criminologist, Walter Miller. Miller's source of information is the police. He asserts that there are 1,450 Asian gang members in New York City, representing 5 percent of the gang members in that city. In San Francisco, he states, there are 235 Asian gang members, or 90 percent of all gang members in the city.[61] While the police and police arrest figures represent important sources of information, most responsible criminologists would use them with great caution, sometimes using them to formulate tentative hypotheses as a basis for further research. Miller, however, not only used the information for a pop article in a widely-circulated magazine,[62] but reached the following conclusion:

> Accepted doctrine for many years has been that Oriental youth pose negligible problems in juvenile delinquency or gang activity; this accepted tenet has been seriously undermined by events of 1970 not only by the violent activities of the newly immigrated Hong Kong Chinese, but by the development in several cities of gangs of Filipino, Japanese, and other Asian groups.[63] (Emphasis added.)

Interviews with the police, school officials, and workers in community organizations in Los Angeles and San Francisco failed to reveal "gangs" as a basis for violent crimes in the Japanese, Korean, and Thai communities as Miller would have us believe.

Miller had previously conducted research on gangs and correctly warned:

> . . . information concerning gangs tends to be highly politicized; the kinds of information released by many of the agencies dealing with gang problems--police, probation, municipal authorities, public service agencies, private agencies and others--are frequently presented in such a way as to best serve organizational interests of the particular agency rather than the interests of accuracy.[64]

Miller, unfortunately, did not observe his cautionary note; thus, Miller is no better than the self-serving agencies he assails.

A compelling reason for care and restraint in the use of the team "gang" is its grave consequences for a youngster facing criminal charges. In Wing v. Fare (Acting Chief Probation Officer of Los Angeles County),[65] a Chinese minor, Wing, was alleged to have committed a robbery. At the adjudication hearing before a referee, the minor did not testify, but two witnesses gave alibi testimony on the minor's behalf. The prosecution called as a rebuttal witness a police officer who testified that the two witnesses and the minor were active members of gangs. Thereafter, the minor was declared a ward of the court, and his application for a rehearing denied. The Court of Appeals reversed the conviction.

> The court held the testimony of the police officer concerning the membership of the minor and his witnesses in the gang, which *was not based on personal knowledge but on reputation*, was inadmissible hearsay, was *irrelevant* to prove the charged offense, and constituted *prejudice* to the minor of an irreparable nature . . . .[56] (Emphasis added.)

There are several cases of convicted Chinese juveniles currently on appeal. One is the case of Chiko Wong, then a 15-year old juvenile, alleged to have committed a robbery-murder. Wong had no prior convictions, but because he was alleged by the police and the probation officer to be a member of a gang, the case was tried in an adult criminal court contrary to the guidelines established for certifying a juvenile to an adult court. This case is currently before the State Supreme Court. In another case, Richard Lee was convicted of murder on November 1, 1972. Lee's alleged gang membership was freely referred to by the press and the prosecution before and during the trial. The conviction was reversed on January 17, 1978.

In a court conviction, the juvenile theoretically has the opportunity to appeal an unjust conviction; there is, however, no appeal in an administrative organization as in a public school. School officials sometimes use the term gang to handle a management problem. Some preliminary findings of a current study of Chinese youth in the San Francisco public schools show that, from 1972 to 1977, 122 Chinese students were referred to the Student Placement Center (SPC), which also serves as the centralized disciplinary unit, and to Student Attendance Review Board (SARB), a unit newly created to handle truancy cases and status offenders. In the school referral reports on the 122 cases, the term gang is used in 31 cases. A typical report resembles the following:

> Date: 12/1/76. 9th grade, Request change of school. Involved in gang-type activities. Warned many times. Cited by police on 11/2/76 riding in car in which occupants of the car on an earlier date were involved in an assault. Suspended on 11/4/76 for 5 days for disobeying rules.

This referral to the Student Placement Center is based upon irrelevant and highly prejudicial information to obtain disciplinary action, specifically, a reassignment to another school.

The head of the Student Placement Center reported that many of these cases pose problems for the administrators of the school, and although he did not recall when one of these referrals resulted in the extreme sanction of expulsion, it is implicitly understood by all that a referral to his office means the transfer of that student to another school.

Unfortunately, once a youngster is officially labeled a gang member, it becomes a certainty that the label will be used against him at some subsequent date. To illustrate this point, the total number of Chinese youngsters referred to the San Francisco Juvenile Probation Department during the period January 1, 1976, to June 30, 1977, were examined. Preliminary analysis shows the labeling of a youngster as a gang member comes primarily from officials. It is clear from the discussion of the schools and from Table IV-7 that the school contributes to the creation of a file based upon hearsay information that is highly prejudicial to a youngster facing criminal charges. The fact that almost one-half of the gang references originate from the probation office suggests the difficulty of obtaining a fair and impartial hearing for these Chinese youngsters. All of this is not to deny the existence of crime and delinquency in the Chinese community, but it is important to note that school personnel and especially criminal justice officials have contributed to the definition of the problem as "gang-related." An analysis of how this has come about is useful.

Table IV-7

Sources Labelling a Chinese Referral a "Gang" Member (in percent)

Source	Percent
Police	20
Probation Office	49
Schools	19
Family	5
Other Official Source	7

(N = 101)

Source: Interviews by P. Takagi.

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a. The Red Scare. It was not until 1965 that immigration restrictions against the Chinese were totally rescinded. However, with the apparent "acceptance" of the Chinese, and the relaxation of the immigration laws came a new and different kind of anti-Chinese sentiment. The turning point was 1949, marking the year when China turned to a Communist form of government. With the "evils of communism" firmly embedded in the minds of Americans from sustained propaganda efforts by the U.S. government, the Chinese in America faced a new wave of anti-Chinese hysteria. The fears of the threat of the workingman's economic interests, which formed the basis of earlier anti-Chinese agitations in the second half of the nineteenth century, were replaced by fears of sabotage and a Communist threat. Thus, the atmosphere remained essentially unchanged as reflected, for example, in the following headlines:

> 83 CHINESE ALIENS ARRESTED IN RAIDS
>
> Three buildings of Seaman's Group in Brooklyn Searched - Red literature reported. (New York Times, 2/1/51)
>
> RED EXTORTION IS LAID TO CHINESE DAILY HERALD
>
> A Chinese Communist newspaper, its president and its former managing editor were indicted yesterday by a federal grand jury . . . .(New York Times, 4/29/52)

The federal government continued the assault on the Chinese community when the House Committee on Un-American Activities subpoenaed Chinese-Americans to testify before the committee.[67] But the height of repression was reached in 1956 when the federal grand jury in San Francisco issued a subpoena duces tecum to approximately 26 districts and family associations of Chinese-American citizens, demanding production, within 24 hours, of all lists, rolls, or other records of membership of the associations during the entire period of the associations' existence, all records of dues, assessments, contributions and other income of the associations, and all photographs of the membership.

Unfortunately, the anti-Communist hysteria did not end with the so-called McCarthy era. FBI Director J. Edgar Hoover initiated a vicious campaign against the Chinese. On April 12, 1969, Hoover testified before the Subcommittee of the House Committee on Appropriations. The following was his testimony:

> The blatant, belligerent and illogical statements made by Red China's spokesmen during the past year

> leaves no doubt that the United States is Communist China's No. 1 enemy. We are being alert for Chinese Americans and others in this country who would assist Red China in supplying needed material or promoting Red Chinese propaganda.
>
> For one thing, Red China has been flooding the country with its propaganda and there are over 300,000 Chinese in the United States, some of whom could be susceptible to recruitment either through ethnic ties or hostage situations because of relatives in Communist China.
>
> In addition, up to 20,000 Chinese immigrants can come into the United States each year and this provides a means to send illegal agents into our Nation.
>
> There are active Chinese Communist sympathizers in the Western Hemisphere in a position to aid in operations against the United States.[68]

FBI Director Hoover continued his diatribe against the Chinese when he testified before the same House Committee in 1971:

> Red China continues to regard the United States as its chief enemy . . . Chinese Communists carry out their intelligence activities through representatives in third countries and contacts with sympathetic Chinese Americans. The large number of Chinese entering the country as immigrants provides Red China with a channel to dispatch to the United States undercover agents on intelligence assignments . . . . (San Francisco Examiner, 7/20/71)

And in November of 1971, Hoover issued a statement to the press alarming the unsuspecting reader:

> SPY DOPE LINKS TO CHINESE ALIEN FLOOD
>
> As many as 4,200 aliens from Communist China sneak into the United States every year, and some of the aliens are on espionage missions, and others are involved in narcotics traffic. (San Francisco Examiner, 11/15/71)

Hoover's statements undoubtedly influenced the several dozen law enforcement agencies in California. For example, Bakersfield, California, a small agricultural town with an insignificant Chinese population, was the location of a federal raid.

> A raid by federal narcotics agents in Bakersfield was part of an investigation by a federal grand jury into heroin trafficking.
>
> The raid by agents of the Organized Crime Strike Force on a meeting on the Yong On Merchants Labor Association found no narcotics and no arrests were made. The Chinese organization sued for $5 million in damages yesterday. (San Francisco Chronicle, 11/17/72)

In Table IV-8, data are presented on the number of Chinese arrested for narcotics offenses. While recognizing the limitations of arrest data, it is clear, however, from Hoover's own agency data that there is no evidence to indicate a change or an increase in narcotic violations in the Chinese community. From 1969 to 1971, when Hoover made his accusations of espionage and narcotics trafficking among the Chinese, the data in Table IV-8 show that the percentage of Chinese arrested for violations of the narcotics laws was insignificant.[69]

Table IV-8

Violations of Narcotic Laws

Year	Total Arrests	Chinese	Percentage Chinese
1964	23,730	13	.0005
1965	31,294	29	.0009
1966	6,927	5	.0007
1967	81,454	46	.0006
1968	98,722	119	.001
1969	193,743	74	.0003
1970	67,743	40	.0005
1971	354,783	208	.0005
1972	402,265	297	.0007

Source: Table adapted from an Asian American Studies case project paper, University of California, Berkeley (no date).

b. Youth Gangs. Hoover's attacks on the Chinese community represent a disgraceful abuse of authority by a government official. But the attacks on the Chinese community did not subside with Hoover's death.

On November 3, 1972, the Attorney General of the State of California issued a prepared statement on Chinese "organized gangs" making public contents of a classified report prepared by his office entitled "Chinese Gang Problems";[70] the classified report was later leaked and was widely circulated in the Asian community. The classified report and press statement were based upon hearsay information on "gang-related crime" in the Chinese community.

There was no arrest of Chinese suspects for homicide in San Francisco in 1971; despite this fact, the Attorney General asserted the following:

> Because of their widespread involvement in gangland killings, Chinese gangs are fast becoming serious threats in the State and other parts of the country in cities and towns having Chinese communities.
>
> These gangs engage in murder, burglary, and extortion of food, money, and services. The major Chinese youth gangs in California are the Wah Ching, Yu Li, Suey Sing. Their activities are primarily concentrated in the San Francisco-Oakland Bay areas and Los Angeles, but indicators point to their possible presence in Sacramento and Stockton. They are not afraid of using physical violence as has been dramatically exemplified in a series of brutal killings occurring in the San Francisco Bay area during the past eight months. (San Francisco Chronicle, 11/3/72)

As incredible as it may seem, another report prepared by the Attorney General's Office entitled "Triad: Mafia of the Far East," this time stamped "confidential," was again leaked and circulated in the Asian-American community.[71] The report attributed the smuggling of heroin from the Golden Triangle to Chinese crewmen of foreign flag vessels and the distributing in the United States by the Triad or the Chinese tongs (secret societies). The report, in effect, is an extension of Hoover's allegations of drug trafficking in the Chinese community, and attempted to link drug trafficking to a Communist conspiracy originating out of the People's Republic of China.

It must be concluded at this point that there is no evidence to date to indicate the existence of an organized criminal gang in the Chinatowns across the United States. Moreover, there is no evidence to indicate that the shootings and killings that have occurred are related to "gangland slayings." The statements by Hoover and the reports prepared by California's Attorney General are based upon crude racial stereotypes that are inflammatory and prejudicial.

The history of anti-Chinese sentiments in California--revived during the fifties by the anti-Communist hysteria--contributes to the harboring of suspicions and uncertainties about the Chinese. When the media report these unsolved crimes, especially homicides, as being gang-related, they create in the minds of people a belief system that precludes alternative interpretation. For example, the San Francisco Chronicle, on its front page, carried the following headline and lead paragraph:

> GANG VICTIM IS YOUTH WORKER
>
> A brilliant and respected youth worker has become the tenth known victim in a series of Chinatown gangland slayings. (June 28, 1972)

To this date, suspect(s) for this killing has not been brought to trial; thus, there is no evidence to support the conclusion that he was a "gang victim" let alone "the tenth known victim" or the victim of "gangland slayings."

It is clear from an analysis of crime and delinquency in the Chinese community that international tensions between the United States and Asian nations have had a profound impact upon Asian-Americans in the United States. The conception of the "enemy overseas" has been caricatured in movies, in the media, and by top law enforcement officials, and these images can have devastating effects upon all Asian-Americans. A recent survey of personnel decision-making executives in fifty top corporations on the West Coast revealed the harboring of prejudice toward Asian-Americans. A majority of the executives (79 percent) had served in the Pacific wars; a majority (67 percent) had seen combat against Asian people; and an overwhelming majority (94 percent) rejected the possibility of employing Asian-Americans at the executive level in their organizations, based upon mistrust of Asian people. The adjectives used to express their prejudice were buzz words such as "sneaky," "conniving" and "shifty."[72] Since many law enforcement personnel are drawn from veterans of these wars, it is not unreasonable to conclude that the same prejudices can shape and determine the day-to-day operation of the criminal justice system.

E. Drug Problems Among Asian-Americans

The bohemian culture of the fifties and the hippie counterculture of the sixties catapulted drug use into national attention. The problems of drug abuse and drug-related crimes have touched virtually every community in America, regardless of its racial or class composition. Little information exists, however, with regard to the drug problem in Asian-American communities.

There are several reasons for this lack of information on Asian-American drug use. First, the small number of Asian-Americans, relative to the total U.S. population, often results in Asians being "lost" in national drug use surveys. Second, as with other crime statistics, Asians are often not separately classified. Third, tendencies to group all Asians together for convenience serve to obscure the nature of the problem as it affects the several Asian subpopulations. Fourth, Asians themselves have been far from eager to make public any community problems, particularly drug-related ones.

Unfortunately, the lack of information has led many to assume that the problem of drug use is nonexistent in Asian communities. An analysis of the limited data that do exist reveals that this is not the case at all.

National Institute of Drug Abuse's acquisition process data do provide a separate Asian-American and Pacific Islanders category; 1977 admissions to NIDA-funded treatment clinics show 1 percent Asians. The information available on these 1,153 individuals is informative:

- 55 percent were heroin users; the next largest categories of drugs used were marijuana (12 percent), barbiturates (9 percent), and inhalants (8 percent).
- 24 percent were under 18--the highest proportion in this age category for any racial or ethnic group.
- 75 percent were unemployed at the time of admission, a figure somewhat higher than the 68 percent for whites, but no doubt inflated because of the large number of teenagers.
- 73 percent were male.
- 56 percent had not been arrested in the 24 months before admission; only Puerto Ricans had as high a proportion of admissions who had not been arrested during this period.

NIDA officials believe that Asian-Americans are underrepresented in treatment programs, and that Conference on Drug Abuse Prevention (CODAP) figures, therefore, understate the problem of drug abuse among Asians. Asian-American experts tend to agree. At the First National Asian American Conference on Drug Abuse Prevention, held February 20-21, 1976, in Los Angeles, some 45 specialists discussed the problem and concluded:

> One reason for the misconceptions about drug abuse in the Asian community is the lack of authoritative data on the subject. This problem has been a self-fulfilling prophecy. The lack of data has led to the belief that a problem doesn't exist. The assumption that there is no problem, in turn, has obviated the need to collect data.

Data presented at the conference, generally dealing with particular cities or states, suggest that drug abuse is a serious problem in Asian-American communities, with high cost to individuals, families, and the community as a whole. For example:

- In Los Angeles, more than 30 overdose deaths were recorded among Japanese-American youth; the Japanese-American population at the time was only 100,000.
- A recent study of Asian inmates in California correctional facilities found that about 90 percent were serving time for drug-related crimes.
- Seattle authorities have found that Asian youth begin drug use earlier than most groups and continue to use it in a pattern more serious than that found for white Americans. King County reported that 40 percent of identified Asian- American drug users were on heroin; speed, barbiturates, and tranquilizers were also used frequently, as well as marijuana.

An earlier study, conducted in 1972 for the Special Action Office for Drug Abuse Prevention (SAODAP) to assess drug problems among different minority groups, found that:

> Barbiturate use is particularly popular among Asian-American, especially Japanese-American teenagers, including teenaged girls. Experts believe barbiturates are chosen because they help remove inhibitions common to the culture.
>
> Opium use remains common among older Chinese men, especially in New York. The majority of users often appear to be alone, individuals who came to this country without their families twenty or thirty years ago. Often, such opium use has become the major focus of the lives of these men, with significant economic costs to them and probably some costs to the society.

More recently, drug use among newly-arrived Asian-American youth, including Vietnamese refugees, has been identified and interpreted as a response to the difficulties of cultural adjustment.

These limited data suggest that Asian-American communities are not immune to the problems of drug abuse that affect other American communities. This realization requires a critical examination of the myth that Asian drug use is not a problem. Hopefully, this will lead to further research efforts.

F. Summary

Of the five Asian communities discussed in this chapter, crime and its related effects are the most serious in the Chinese community. Why has the Chinese community experienced relatively higher levels of crime and oppression when others, for example, the Korean community, have not? There are several factors that are clearly linked in a causal chain.

Class origin is the distinguishing factor in recent Asian immigration. With the exception of the Chinese, the other groups have come from petit bourgeois backgrounds. The Japanese, with the exception of the war brides, are employees of monopoly capital; Koreans are reported to have an average of 14 years of education, making them one of the highest educated groups in the United States; and the Thais came to the United States as students and tourists, which reveal their class status. This fact is not an accident as the immigration laws are now specifically designed to admit certain classes of immigrants.

There are also provisions in the new immigration laws to admit relatives of U.S. residents. These provisions apply to the Chinese, who have been precluded from entering the United States since 1882, with the exception of token admissions after legislative changes in 1925 and again in 1943. The new Chinese immigrants are primarily of working-class background and have settled in Chinatown for various reasons: accessibility to family and friends, work, retail stores, and entertainment and for proximity to people of their own kind; and a convenient transportation network and its location with respect to the rest of the city.

The existence of Chinatown, a racially homogeneous community, is a contradiction in this day of monopoly capitalism unless its existence contributes to the accumulation of profit. For example, nihonmachi in San Francisco was completely transformed into a center of corporate trade while the nearby black ghetto was leveled to accomplish the objective. The transformation of Western Addition (containing Japan-town) in

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San Francisco illustrates the point. Chinatown, however, is not an ethnic community in the traditional sense; it is glued together and sustained because of its importance to the tourist industry with linkages to the nearby chain hotels and to the city's reputation as a convention center. What this means is that the retail stores and restaurants in Chinatown, which are noted for their reasonable prices, are highly dependent upon a cheap labor force.

Census data support this analysis, as 21.4 percent of the Chinese are employed by restaurants and bars at a rate ten times higher than the Japanese;[73] in New York's Chinatown, 53 percent of the adult men and 36 percent of all working residents are employed by restaurants.[74] Over 34 percent of the Chinese in the United States are employed in the retail trades as compared to 15 percent for the Japanese and 14 percent among whites.[75] Light and Wong in their study of Chinatown conclude that there is competition for the tourist dollar that results in the exploitation of labor.[76]

Despite the long hours of work, the low wages in Chinatown force spouses to supplement the family income by working in the highly exploitative garment industry. The families are crowded into inadequate housing--a family of six in a two bedroom apartment is not unusual--and results in intra-family tensions. To escape from this, the Chinese family has been observed to spend many hours on the street, which, of course, means late hours for the children.[77]

Interviews with Chinese adolescents show that they are acutely aware of how hard their parents must work. They are reluctant to ask their parents for money to purchase items that have special significance to adolescents. Typically, these are fetishized commodities embedded with a sense of identity and human potentiality; thus, store bought clothes are desired and the mother's hand sewn product is rejected. In a recent study of Chinese referrals to the Juvenile Probation Department, it was found that those referred for petty theft victimized department stores rather than the small retail businesses in Chinatown, which suggests that store labels and name brand products are elements of commodity fetish.

While the majority of adolescents form peer group associations, the poor in society in general, and the Chinese in particular, turn increasingly to peer associations for nurturance and support as the traditional functions of the family become overwhelmed by the sheer necessity of economic survival. Studies of Chinese adolescents show that the peer group begins to take precedence over the family. The families desperately stress the traditional Confucian values of filial piety, sacrifice, and self-sufficiency, but these are not sufficient to overcome the values of support, loyalty, and "heart" stressed in the peer group. Parental social control, including corporal punishment and the use of shame ("You are bringing shame to the family"), sobers the adolescent momentarily, but the pull of the peer group becomes stronger and stronger as the routines in school and life on the streets center almost completely on the group. Not all groups turn to criminal behavior; obviously some are forced to.

There is a serious lack of sufficient recreational space designed specifically for youth in San Francisco's Chinatown. Beginning around 1969, the police were employed to sweep the streets of hangers-on, leading to instances of police brutality and harassment. Since Chinatown does not exist for its residents, but rather for the tourist industry, the practice of harassing Chinese youth originated from "downtown" and from the businessmen in Chinatown. The adolescents understand this; consequently, they are only a short step away from retaliating with the only means readily available to them.

While the task of developing a more detailed analytic scheme is beyond the scope of this report, the foregoing discussion provides a beginning for an understanding of delinquency in Chinatown. Comprehending the significance of the conquest of Chinatown's services and conversion into a commodity is crucial to an analysis of Chinatown.

Chinatown no longer belongs to its people. While racial attitudes are properties of individuals, racism in its institutionalized form takes on a life of its own. In this sense, Chinatown has become a product of institutionalized racism. It is no longer a community of people with common interests, nor is it organized primarily to meet the needs of its residents; it is, instead, a mass of people identifiable by race and organized, from the most humble worker and the employer in Chinatown, to the downtown hotels, the airlines, and the Chamber of Commerce, into an interdependent community, each linked to the other to form the structure of the tourist industry.

Chinatown is also linked to the surrounding industries--the fishing industry, poultry, meat, rice, and the overseas trade--by redistributing commodities for retail sale and by converting foodstuffs into consumable commodities that are uniquely Chinese. It is in this way that Chinatown itself becomes a commodity, packaged and promoted along racial lines. Chinatown is a colony within the larger urban space to be visited but not lived in; a place where people come to consume what it offers but give nothing in return except money. It is this feature of contemporary Chinatown as a whole that creates an alienation that is no different from the individual worker who separates from the product of his labor.

In closing, there are passages in this chapter that are stated in order to emphasize areas in desperate need of research, particularly research that calls for an analysis of the relationship of race and class to crime. Research also needs to be conducted on the several Asian-American communities that have emerged in recent years: the Vietnamese and the Pacific Islanders.

G. The New Asian American Communities: Vietnamese, Laotian, and Cambodian

The influx of Indochinese refugees is the basis for the emergence of new Asian communities throughout the United States, but principally in California. The arrival of the newest population from Asia can be directly attributed to America's military adventures in Southeast Asia.* The abrupt ending of the Vietnam War in the spring of 1975 became the catalyst for massive social dislocation of people in Vietnam, Laos, and Cambodia, and during the ensuing period when changes in governments occurred, thousands of people fled from their homelands. Between April 1975 and October 1979, a total of 290,000 Indochinese came to the United States.[78] Of these, the vast majority were Vietnamese (approximately 85 percent), the remainder being equally divided between Laotians and Cambodians.[79]

Demographic data on these new immigrants are sketchy because of the recentness of their arrival and the nonuniform statistical compilations by the various governmental agencies. The most comprehensive data are on the earliest refugee population that arrived in 1975 shortly after the end of the Vietnam War. Much of what follows is based upon the experiences of this group. Since the majority are Vietnamese, the discussion cannot be generalized to Laotians and and Cambodians; however, the social and psychological adjustment difficulties have been commonly experienced by all three populations.[80]

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* Technically, the term immigrant does not apply to the Indochinese, according to Immigration and Naturalization Service rules and policies. The Indochinese are considered refugees, who after two years' residence can apply to adjust their status to that of an immigrant seeking permanent residence. For purposes of this paper, we will forego this distinction and use the terms interchangeably.

The fall of Saigon in April 1975 triggered the first significant wave of Vietnamese refugees. In a brief period following that event, some 133,000 refugees were admitted to the U.S.[81] While the refugees represen a range of occupations and social strata, certain common characteristics emerge which make them a fairly homogeneous group. First, a large proportion of the refugees arrived in large family and extended family groups, a fact that is amazing given the chaotic circumstances surrounding their departure.[82] These large families, with an average of four children, account for the youthfulness of the refugee population: 42.6 percent are under the age of 17 and another 18.3 percent are between the ages of 18 and 24.[83]

Several characteristics point to the fact that this first wave of refugees came largely from the higher strata of Vietnamese society. First, 50 percent of them are Catholic, an unusual distribution given that only 10 percent of the Vietnamese are Catholic.[84] This indicates that the refugees had had close contact with Western ideas and activities, a characteristic common to people in the upper levels of society. Second, 66 percent of the refugees lived in urban areas prior to evacuation, again reflecting a skewness toward people from well-to-do backgrounds.[85] Third, occupationally, 31.2 percent of the heads of households among the refugees were professionals in Vietnam, and 15.1 percent were managers. The refugees are also a highly educated group compared to the general Vietnamese population: 47.8 percent had some secondary education, 22.9 percent had some years of university education, and 4.5 percent had received some postgraduate education.[86]

Many believed that these characteristics would facilitate the adjustment of the immigrants into the mainstream of American life. It was assumed that their educational background and exposure to Western ideas made the refugees' lifestyles reasonably compatible with the lifestyles of the United States. This did not hold true, however, as a range of problems arose which made resettlement a slow and arduous process. Montero points out that the suddenness of their departure left many psychologically unprepared to start a new life in a different land. Unlike voluntary immigrants, many of the Indochinese refugees were reluctant to leave their homeland. There was a genuine feeling of regret, which was exacerbated by the fact that, oftentimes, property, friends, and relatives had to be left behind.[87]

Conditions in the United States complicated the resettlement of the refugees. The social climate in America at the time of the refugees' arrival was not favorable to resettlement. The Vietnam War was an extremely unpopular conflict, and the American people were anxious to end U.S.

involvement and forget about the mistakes made in Southeast Asia. The refugees were an unpleasant reminder of the war and were often treated with hostility.

Adverse economic conditions were the most serious barriers to smooth resettlement. The U.S. was in the midst of a recession in 1975. Unemployment in general was high, making it particularly difficult for the refugees to find jobs. The high unemployment rate during the initial months of resettlement is indicative of this situation. The economic conditions led to a considerable amount of downward mobility among the refugees, as many were forced to accept jobs that were not commensurate with their education or previous experience. Table IV-9 illustrates this point.

Table IV-9

Occupational Adjustment of Vietnamese Refugees

Occupation	In Vietnam	In U.S. 3 mos.	7 mos.	15 mos.	27 mos.
Professional	30.2%	7.1%	6.6%	6.2%	7.0%
Managers	15.1	1.4	1.0	1.4	2.3
Clerical	22.7	19.5	13.2	16.5	18.7
Craftsman	14.3	16.3	21.9	33.1	29.5
Operatives	3.3	2.7	6.2	3.9	11.5
Laborers	--	12.1	16.7	7.2	7.2
Other Blue Collar	1.4	34.2	24.4	31.7	24.0

Source: Adapted from Barry Stein, "Occupational Adjustment of the Refugees," International Migration Review, p. 29, Winter 1979.

Part of the blame for this downward mobility can be placed on the government agencies in charge of resettlement. Their principal concern was the quick and efficient resettlement of the refugees, at the least cost to taxpayers. To this end, the Interagency Task Force placed a 45-day maximum limit to resettle individuals.[88] This pressure forced many refugees to accept the first job available, even if they were qualified to get better jobs. Thus, even though unemployment rates declined during the first two years of resettlement, the underemployment rate among refugees remained high.

Table IV-10

Unemployment And Underemployment of Vietnamese

	3 mos.	7 mos.	15 mos.
Unemployed	32.0%	18.2%	14.0%
Underemployed	76.0%	73.5%	67.7%

Source: Adapted from Stein, p. 32.

After 27 months, unemployment had dropped to 4.9 percent, but downward mobility persisted as 60 percent of the Vietnamese who held white collar positions in Vietnam held blue collar jobs in the U.S.[89]

The difficulties associated with resettlement have manifested themselves in increasing mental health problems among the refugees. Several studies have found that depression is the most common and serious problem.[90] The downward mobility and its accompanying loss of status is identified as the principal cause of this depression.

In addition to mental depression, life in the U.S. placed considerable strain on interpersonal relationships. Family life has suffered. In many instances, Vietnamese parents have reported that their children are losing respect for them because of their inability to secure decent employment. In other cases, heads of households find themselves overwhelmed by the responsibility of supporting a large family. Wives and the elderly became overly dependent on the heads of households, contributing to new sets of problems for both the heads and the dependent members. To quote from a recent report:

> The dependent family member is caught in a spiral of anxiety, fear and helplessness, resulting in an air of tension and irritability with the household.[91]

To date, there have been no studies on crime and criminal victimization in the new Asian refugee communities. The data that do exist are based upon clinical and casework observations. One report, prepared by the director of the Indochinese Community Health and Education Project in San Diego, California,[92] notes that the social adjustment problems encountered by the refugees have led to marital problems--as indicated by separations, divorces, and runaways. The report indicates: "There have been many more suicide attempts since their arrival three years ago."[93] Perhaps the most serious criminal justice issue confronting the new immigrants is the racism and prejudice directed toward them by white society. With increasing frequency, refugees are being harassed by local whites. Across the United States, the refugees have had trash thrown at them and have been called uncomplimentary names and their homes have had their windowns broken.[94] In San Diego, for example, it has been reported that service workers are rude to refugees, white youth ridicule refugees, and Indochinese youth are attacked and ganged up on by other youth.[95]

The foregoing discussion is based primarily on information collected on the first wave of Indochinese refugees. Since 1975, conditions in Southeast Asia have led to new waves of immigration, the most notable occurring from mid-1978 through 1979. During this period, approximately 120,000 Indochinese refugees arrived, while thousands of others remained in refugee camps in Thailand and Malaysia awaiting their turn to come to the United States.[96]

There are major differences between the most recent wave of refugees and those that came in 1975. First, the 1978-79 refugees are mostly Chinese-Vietnamese. The reorganization of the economy in Vietnam virtually displaced the large ethnic Chinese population in the country. Mostly merchants and small businessmen, the Chinese were at once the victims of Vietnam's anticapitalist campaign and the victims of anti-Chinese sentiments. While thousands fled to mainland China, others felt that the most appropriate destination would be the United States. As a result, nearly two-thirds of the most recent influx are Chinese-Vietnamese.[97]

Many of the Chinese-Vietnamese refugees come from middle-class, well-educated backgrounds; others, however, tend to be poorer, less well educated, and less proficient in English than the earlier arrivals. Moreover, the difficulties of life in Vietnam after 1975 and the hardships that accompanied efforts to leave have left many of the recent immigrants with severe health and psychological problems.[98] These factors suggest that this recent group may face an even more difficult problem in adjusting to life in America.

To conclude this section, brief mention should be made of where problems among the refugees are most likely to occur. Though the refugees have settled, to some degree, in virtually every state in the nation, statistics show that the largest concentration of refugees is in California. The mild climate, somewhat better economic conditions, and the existence of a large Asian population has made California an attractive location. The Office of Refugee Affairs estimates that of a total of 248,000 refugees, 82,300 reside in California.[99] Though no precise data exist, it is believed that most of these refugees have resettled in urban areas such as Los Angeles and the San Francisco Bay Area. Moreover, many of the Chinese-Vietnamese have settled in San Francisco's Chinatown.

Evidence indicates that the refugees will continue to concentrate in California long after the flow of refugees stops. Already, California is the recipient of secondary migration among the refugees. The Immigration and Naturalization Service estimates that California gained 1,762 refugees in 1979 due to secondary migration. The state with the next highest gain is Texas with 1,259.[100]

This resettlement pattern, combined with the adjustment problems the ethnic Chinese refugees now face, might well exacerbate the already existing delinquency and crime problem in Chinatowns on the West Coast.

It should be noted that the Law Enforcement Assistance Administration has only recently issued solicitations for research studies that include an Asian-American component. The funding of such studies may well lead to information that will further contribute to an understanding of justice, and their impact upon Asian communities. Now there is but a handful of scholars addressing crime and delinquency in the Asian communities, and even fewer who are trained in criminology. Despite this state of affairs, William Chambliss has recently published his observations on gambling dens in Seattle's Asian community;[101] Charles Tracy has uncovered police data on Chinese offenses in nineteenth century Portland;[102] Greg Mark wrote his doctoral dissertation on the economics of opium among the Chinese in nineteenth century California;[103] and Tetsuya Fujimoto did his dissertation on an alternative explanation of the low crime rates among the Japanese in the United States.[104] More studies like Charles Tracy's examination of arrest data over time are needed.

In addition, some racial categories of people--the Chinese, Samoans, blacks, and Chicanos--perhaps in fact engage in law breaking behavior at a relatively higher rate than some other racial and ethnic populations.[105] As sketched out in the analyses of Asian communities, there are structural factors that impinge upon minorities in different ways. Funding ought to be made available, or individual scholars commissioned, perhaps by LEAA, to study the structural factors of crime. An effort should be made to compile and compare data (arrest, conviction, disposition) on, for example, the Chinese in the major metropolitan centers across the United States. Funding should also be made available to study the cultural and biographical determinants as well. The thoughts and experiences related to the way people deal with their life situations need to be understood, and only then can one accurately compare, for example, the experiences of crime among the different ethnic and racial populations.

Furthermore, of particular concern to Asian-Americans is their victimization. This chapter has attempted to identify some of the broad areas of victimization. An important aspect of victimization is the cultural and biographical components of crime. One needs to sort out law-breaking behavior related to hustling on the streets. In the nation's Chinatowns, the most lucrative hustle is the selling of firecrackers during the major holidays, Chinese New Year and the July 4th weekend. In a single season, individual profits of $1,000 are not unusual, resulting in, according to the police, conflicts over control of the market and, of course, arrests or citations of juveniles for possession and sale of a contraband. Perhaps the most puzzling hustle is the activities related to gambling. The police believe gambling is linked to organized crime in Chinatown, and related to the violence and murders that have erupted in recent years. While youngsters tied to gambling operations are probably few in number, one needs to examine how gambling, believed to be widespread, is institutionally linked to culturally-defined activities. In other words, while gambling and the sale of firecrackers are defined as illegal activities, their persistence cannot be solely explained in terms of hustles that conflict with the law. For example, the celebration of the family associations is frequently funded by gambling, the proceeds of which are used to assist the poorer members in the association; or firecrackers are routinely used as a good luck gesture at the annual ceremonial events. Thus, studies need to be funded that will take into account not only the social organization of the Asian community, but also the cultural patterns and options that are available to marginalized adolescents.

Finally, a very high priority is to study the new labor-intensive industries that employ primarily the new immigrants from Asia. These are the electronic industries as in Santa Clara County, California. Very little is known about the work-force, other than what is reported in the daily newspapers. There is discrimination in housing toward these new immigrants, requiring them to commute great distances; the pay is highly exploitative and the industries have gone to great length in resisting unionization. Many of the new immigrants, as noted earlier, are overwhelmed by the sheer necessity of survival. It is crucial that studies about employment practices be initiated with regard to Asian-Americans. Such studies would, it is hoped, lead to implementation of creative policies and programs before the problem gets out of hand.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, July 1, 1977.
2. Walter G. Beach, Oriental Crime in California (Stanford· Stanford University Press, 1932).
3. Ibid., p. 64
4. Norman S. Hayner, "Delinquency Areas in the Puget Sound Region," American Journal of Sociology, 39 (November 1933).
5. Idem "Social Factors in Oriental Crime," American Journal of Sociology, 43 (1937-38).
6. Helen MacGill, "The Oriental Delinquent in the Vancouver Juvenile Court," Sociology and Social Research, 22 (May-June 1938).
7. Arthur W. Lind, "Some Ecological Patterns of Community Disorganization in Honolulu," American Journal of Sociology, 36, 2 (September 1930); also "The Ghetto and the Slum," Social Forces (December 1930).
8. Richard Sollengerger, "Chinese American Child Rearing Practices and Juvenile Delinquency," Journal of Social Psychology, 74 (1968).
9. Report of the San Francisco Chinese Community Citizen's Survey and Fact Finding Committee (San Francisco: H. J. Carle and Sons, 1969); see also Krisberg, Barry and Takagi, Paul, "Ethical Issues in Evaluating Criminal Justice Demonstration Projects," in Riedell and Cahppell, eds., Issues in Criminal Justice (New York: Praeger, 1976); Takagi, Paul and Platt, Tony, "Behind the Gilded Ghetto: An Analysis of Race, Class and Crime in Chinatown," Crime and Social Justice, 9 (Spring-Summer, 1978).
10. Takagi and Platt, op. cit.
11. See U.S. Department of Justice, LEAA publications: "Criminal Victimization Surveys in 13 American Cities," June 1975; "Criminal Victimization Surveys in Eight American Cities," November 1976; "Children in Custody," May 1975; "Prisoners in State and Federal Institutions," May 1975; and "Surveys of Inmates of State Correctional Facilities, 1974," March 1976.

12. See publications and newsletters issued by AAMHRC, 11640 W. Roosevelt Road, Chicago, Illinois 60608. AAMHRC is funded by NIMH's Center for Minority Mental Health and affiliated with the University of Illinois, Chicago Circle.

13. *Civil Rights Issues of Asian and Pacific Americans: Myths and Realities*, A consultation sponsored by the U.S. Commission on Civil Rights, May 8-9, 1979.

14. Thomas Chinn, ed., *A History of Chinese in America* (San Francisco: Chinese Historical Society of America, 1969), p. 9.

15. Dan Caldwell, "The Negroization of the Chinese Stereotype in California," *The Historical Society of Southern California*, 53, 1971.

16. Chinn, op. cit., p. 24.

17. Cheng-Tsu Wu, *Chink* (New York: World Publishing Co., 1972), p. 36.

18. Takagin and Platt, op. cit. Table 5 in this article is evidence that Chinese in California prisons, between 1865 and 1888, constituted a substantial proportion of the total prison population.

19. Chinn, op. cit., p. 38.

20. H. Brett Melendy, *The Oriental Americans* (New York: Hippocrene Books, 1972).

21. Twenty-four U.S. Statutes at Large, 1887, 49.

22. Melendy, op. cit., pp. 132-35.

23. Emma Gee, "Issei Women," *Counterpoint* (Los Angeles: UCLA, 1976).

24. Ibid.

25. In addition to Hayner, MacGill, Lind, and Beach cited earlier, see H.K. Misaki, "Delinquency of Japanese in California, Stanford: Stanford University Series in Education-Psychology, Vol. 1, 1933; H.L. Voss, "Ethnic Differentials in Delinquency in Honolulu," *Journal of Criminal Law, Criminology, and Police Science*, 54, September 1963; Norman Hayner and Charles Reynolds, "Chinese Family Life in America," *American Sociological Review*, 2, 1937; and Rose Hum Lee, "Delinquent,

Neglected, and Dependent Chinese Boys and Girls of the San Francisco Bay Region," Journal of Social Psychology, 36, 1952.

26. See Hirabayashi v. United States, 320 U.S. 81 (1943) which upheld the right of the government to enforce curfews for persons of Japanese ancestry during World War II; also Korematsu v. United States, 323 U.S. 214 (1944) that upheld the conviction of a Japanese American for violating the military order placing Japanese in "detention centers" or concentration camps.

27. H. Brett Melendy, Asians in America (Boston: Twayne Publishers, 1977).

28. Jovine Navarro, "Immigration of Filipino Women to America," Asian American Women, Stanford, 1975.

29. Carlos Bulosan, America Is in the Heart (Seattle: University of Washington Press, 1943). See Chapter 15.

30. See Japanese, Chinese, and Filipinos in the United States, U.S. Department of Commerce, Bureau of the Census, U.S. Government Printing Office, July 1973.

31. Since 1949, the data have been published in California Prisoners, Department of Corrections, Sacramento, California. The earliest data beginning in 1854 are to be found in the Report of the Joint Committee on State Prison Affairs, Ninth Session, 1858; Report of the Joint Standing Committee on State Prison, 11th Session, 1860; and beginning in 1880, in the annual reports issued by the State Board of Prison Directors, Sacramento, California.

32. See Annual Report, Department of the Youth Authority, Sacramento, California, 1976.

33. Bureau of Criminal Statistics, Crime and Delinquency in California, Department of Justice, 1975.

34. Federal Bureau of Investigation, Crime in the United States, Uniform Crime Reports, Washington, D.C.

35. This report limits the discussion of crime to the Korean, Thai, Japanese, and Chinese communities. Ordinarily, the term Asian-American includes the following additional groups: Guamanian, Hawaiian, Laotian, Malaysian, Filipino, Samoan, and Vietnamese. See, for example, The Pan Asian Bulletin, Union of Pan Asian Communities, San Diego, California. The availability of data and research limitations were the main considerations in

limiting the report to the four Asian-American communities.

36. See testimony of Minoru Yasui in *Civil Rights Issues of Asian and Pacific Americans*, May 8-9, 1979, p. 33.

37. Edna Bonacich, Ivan Light, and Charles C. Wong, "Koreans in Business," *Society*, 14, September/October 1977.

38. Ibid.

39. Harry Kitano, "The Development of a Middleman Minority," *Pacific Historical Review*, 43, November 1974; Edna Bonacich, "A Theory of Middleman Minorities," *American Sociological Review*, 38, October 1973.

40. Harry Braverman, *Labor and Monopoly Capital* (New York: Monthly Review Press, 1974). See especially Chapter 13.

41. Ibid., p. 281.

42. David Harvey, "Society, the City and the Space Economy of Urbanism," *Commission of College Geography, Association of American Geographers*, Paper #18, Washington, D.C., 1972.

43. See Paul Takagi, "New Asian Immigration and the Development of Racial Communities in the United States," paper read at the annual meeting of the American Sociological Association, Boston, Mass., August 1979.

44. Ivan Light, *Ethnic Enterprise in America, Business and Welfare Among Chinese, Japanese, and Blacks* (Berkeley: University of California Press, 1972).

45. Donald Hata, Jr., "Undesirables: Unsavory Elements Among the Japanese in America Prior to 1893 and Their Influence on the First Anti-Japanese Movement in California" dis., University of Southern California, 1970.

46. Isami Waugh, "Hidden Crime and Deviance in the Japanese Community, 1920-1945", dis., School of Criminology, University of California, Berkeley, 1978.

47. Alan Block, "Aw...Your Mother's in the Mafia: Women Criminals in Progressive New York," *Contemporary Crises*, 1, January 1977.

48. *Japanese, Chinese, and Filipinos in the United States*, op. cit.

49. Ibid.

50. Ibid.

51. W. J. Chambliss and R. H. Nagasawa, "On the Validity of Official Statistics: A Comparative Study of White, Black, and Japanese High School Boys," *Journal of Research on Crime and Delinquency*, 6, January 1969.

52. Anita Ringo Mitchell, data collected for a doctoral dissertation currently in progress, No title, School of Criminology, University of California, Berkeley.

53. Harry Kitano, *Japanese Americans: The Evolution of a Subculture* (Englewood Cliffs: Prentice Hall, 1969).

54. Ibid., see Table 6.

55. Ibid., see Tables 7 and 8.

56. HEW Report, op. cit.

57. Ivan Light and Charles Wong, "Protest and Work: Dilemmas of the Tourist Industry in American Chinatowns," *American Journal of Sociology*, 80, May 1975.

58. For statistical summary of Asian immigration and Asian American population, see: Urban Associates, "A Study of Selected Socio-Economic Characteristics of Ethnic Minorities Based on the 1970 Census, Vol. II: Asian Americans," Department of Health, Education, and Welfare, HEW Publication No. (OS) 75-121, July 1974.

59. Ibid.

60. Based upon a current study by Paul Takagi.

61. Walter Miller, "Violence by Youth Gangs and Youth Groups as a Crime Problem in Major American Cities," *U.S. Department of Justice, Law Enforcement Assistance Administration*, Washington, D.C., December 1975.

62. Walter Miller, "The Rumble This Time," *Psychology Today*, May 1977.

63. Miller, op. cit., 1975, p. 27.

64. Ibid., p. 3.

65. *Wing* v. *Fare*, 67 C.A. 3d 69, February 1977, pp. 69-79.

66. Ibid., p. 69.

67. 83rd Congress, 1954, pp. 3254-3257.

68. Stanford Lyman, The Asian in the West, Reno and Las Vegas: University of Nevada System, 1970, p. 117.

69. Technically, the number of arrests should be calculated against the total number of Chinese in the population. But since the Chinese community experienced enormous changes since 1965, there is no reliable population estimate to calculate rates over time. By taking the 1970 census data, the 40 Chinese arrested for narcotics violations in that year yield a percentage of .00009. For the nation as a whole, the percentage is .0003, over three times higher than that for the Chinese.

70. ______, "Chinese Gang Problem," *The Organized Crime and Criminal Intelligence Branch*, Department of Justice, California, March 1972.

71. ________, "Triad: Mafia of the Far East," *Criminal Intelligence Bulletin*, Department of Justice, California, July 1973.

72. Amy Tachiki, et al. *Roots: An Asian American Reader* (Los Angeles: Regents of the University of California, 1971), pp. vii-xi.

73. Light and Wong, op. cit.

74. Ibid.

75. Ibid.

76. Ibid.

77. Sollengerger, op. cit.

78. Immigration and Naturalization Service, *Reporter*, Fall 1979, p. 2.

79. U.S. Department of Health, Education and Welfare, Office of Refugee Affairs, *Indochinese Refugee Assistance Program - Report to the Congress*, December 31, 1979.

80. *INS Reporter*, op. cit., p. 2.

81. Darrell Montero, "Vietnamese Refugees in America," *International Migration Review*, 13, Winter 1979, pp. 16-17.

82. Op. cit., Report to Congress, p. 16.

83. Montero, op. cit.

84. Ibid.

85. Barry Stein, "Occupational Adjustment of the Refugees," International Migration Review, 13, Winter 1979, pp. 16-17.

86. Darrell Montero, Vietnamese Americans (Boulder: Westview Press, 1979).

87. Ibid., p. 26.

88. Stein, op. cit., p. 32.

89. See G.P. Kelly, From Vietnam to America (Boulder: Westview Press, 1977); William Liu, and A. Murata, "The Vietnamese in America - Part IV," Bridge, 6, 1978; also Montero, op. cit., 1979.

90. Aylesworth, L.S. and et al., "Stress and Mental Health Among Vietnamese in the United States," Report No. 8, Asian American Mental Health Research Center, Chicago: P/AAMHRC, 1978.

91. INS Reporter, op. cit., p. 2.

92. Jainee Wong, "Indochinese Refugees: The Mental Health Perspective," Civil Rights Issues of Asian and Pacific Americans, U.S. Civil Rights Commission, Washington, D.C., May 1979.

93. Ibid., p. 225.

94. Ibid., p. 222.

95. Ibid., p. 232.

96. Comptroller General of the United States, The Indochinese Exodus, (Washington, D.C.: U.S. Government Printing Office, April 1979), p. 11.

97. Ibid., p. 65.

98. Report to Congress, op. cit., p. 16.

99. Ibid., p. 15.

100. Ibid.

101. William Chambliss and Milton Mankoff, eds., Whose Law? What Order? (New York: Wiley, 1976).

102. Charles E. Tracy, "A Historical Perspective on Race an Crime: Chinese Arrests in Portland, Oregon - 1971-1885." Paper prepared for the 7th annual conference of the Western Society of Criminology, Irvine, California, March 1, 1980.

103. Greg Mark, dis., University of California, Berkeley.

104. Tetsuya Fujimoto, "Social Class and Crime: The Case of the Japanese Americans," dis., School of Criminology, University of California, Berkeley, 1975.

105. Michael Hindeland, et al., "Correlates of Delinquency: The Illusion of Discrepancy Between Self-Report and Official Measures," American Sociological Review, 44, December 1979.

CHAPTER V

THE INEQUALITY OF JUSTICE: POLICE

> And then there is a public problem of the general public being uninformed or misinformed about the facts relating to the lack of police accountability and misconduct. Now, I know that under the best conditions police work is tough and highly dangerous. The performance of their duty is absolutely essential to the orderly function of our society. But I do not believe that the public should be expected to pay for the services by accepting a certain amount of lawlessness in the form of police misconduct.[1]

A. Historical Perspective

The history of the police in the United States reflects the evolution of a socially approved armed institution whose role has frequently been at odds with the freedom and the very lives of minority peoples. While the roots of the American police may be traced to England, the role of the modern American policeman was heavily influenced by the "paddyrollers" who patrolled southern plantations, swamps, and towns to ensure that slaves stayed in their assigned roles and did not disrupt the "slavocracy" on which the southern society and economy were based. Thus, beginning in 1690 with South Carolina, states throughout the south organized patrol systems utilizing paddyrollers.[2] Paddyrollers, like the early night watch guards, constabulary and sheriffs who operated in Boston, New York and early American towns, were generally lower class whites who were not well paid, were not trained, and were not widely respected even by those who employed them.

A contemporary description of the paddyrollers exists in the narrative autobiography of Solomon Northup, a slave in 1850:

> How it is in other dark places of slavery, I do not know, but on Bayou Boeuf there is an organization of patrollers, as they are styled, whose business it is to seize and whip any slave they may find wandering from the plantation. They ride on horseback, headed by a captain, armed, and accompanied by dogs. They have the right, either by law or by general consent, to inflict discretionary chastisement upon a black man caught beyond the boundaries of his master's estate without a pass, and even to shoot him, if he attempts to escape. Each company has a certain distance to ride up and down the

> bayou. They are compensated by the planters, who contribute in proportion to the number of slaves they own. The clatter of their horses' hoof dashing by can be heard at all hours of the night, and frequently they may be seen driving a slave before them, or leading him by a rope fastened around his neck, to his owner's plantation.[3]

Northup's description reiterates the fact that the function of the paddyrollers was to protect the prevailing social structure and property of the dominant class. Under this system, there was no consideration given by the forebears of today's police to the needs, rights, or physical integrity of the forefathers of today's black Americans.

The early policemen, whether they were city constables and night watchmen, town sheriffs or paddyrollers, did not become fully armed until immediately after the Civil War, when crime, lawlessness and weapons were widespread throughout society. During this period when the structure of American police departments became more defined and the role of the police broadened, black Americans were struggling to survive with their new-found freedom in a rapidly changing economic structure. As with many institutions of government, the modern American police department evolved without strong participation by the minority community.

An even more fundamental historical dilemma between the police and the minority community is that the police were expected to enforce laws that embodied the same general community standards that were the target of minority efforts to change. Black people in both the North and South struggled to be accorded equal rights as citizens. During the mid-1800s, Asian people, as new immigrants, were abused and arrested as they pursued their social and economic place in America.[4] Hispanics, likewise, were victims of a social oppression enforced by powers of the police.[5] Oppression of Hispanics was a particularly acute problem during the late 1800s in the southwestern part of the country. Across the nation, as the United States pushed westward, the American Indian suffered at the hands of the armed forces as well as the armed police.[6]

Given that minority persons in America historically did not have the opportunity to express their concerns in the policy-making circles of individual police departments, city councils, or state legislatures, it is no wonder that many in the minority community continue to view the police as an armed occupying force, present only to reconnoiter black, brown, yellow and red people's behavior and to contain any "undesirable" individual or collective action. On the other hand, there are those who believe that the police are present to protect the property of those who have acquired it and the lives of those who are potential crime victims.

Minority people do recognize that there is a legitimate role for the police to play in the present overall social, economic and political structure of this country, the same structure that once excluded and restricted full minority participation within it. As minority persons continue to struggle for full participation in American life, their views on the proper role of the police must be heard. The police must become responsive to minority input or continue to suffer the consequences of mutual distrust, noncooperation and urban chaos.

Touring Watts in 1965 after the riot, Martin Luther King, Jr., wrote: "As long as people are ignored, as long as they are voiceless, as long as they are trampled by the iron feet of exploitation, there is the danger that they, like little children, will have their emotional outbursts which will break out in violence in the streets."[7] The urban disorders in Miami and Chattanooga during the summer of 1980 and the demonstrations in Milwaukee and Signal Hill during the summer of 1981 reflect that minority people are still being ignored and trampled on by police in America. In most American cities, from a police perspective, minorities are still voiceless.

The National Minority Advisory Council on Criminal Justice has found in numerous interviews with people in various minority communities that, within their communities, there is no agency more pivotal to the feeling of justice or injustice than the police. More common than riots is the dormant hostility between the police and the minority community that characterizes their daily interactions from opposite sides of a chasm of misunderstanding and distrust. Whether the hostility is overt or latent, it nevertheless represents a serious public policy dilemma for those who are responsible for the well-being of the community. Resolution of the problem requires immediate and affirmative action by both police and citizens.

The Council understands, as minority citizens must come to understand, that police departments have various structural components. Some of these components, such as the patrol units, have a direct impact on minority persons. Other components, such as the administrative policymakers, have an indirect impact on the minority community. In reviewing the key areas in which the problems between the police and the minority community frequently arise, the Council has targeted the following police department components as being urgently in need of change: hiring and training practices, internal administrative procedures, and general administrative policies. There is also a need for more effective use of the internal and external controls on current police behavior.

The remainder of this chapter focuses on specific issues on policing in which minority concerns are paramount and offers clear directions and viable solutions for change in each of these areas.

B. The Issues

1. The Police Role

The proper role of the police in minority communities is identical to the police role in the broader community: to protect and to serve the citizenry. It is generally accepted that the police function involves the prevention of crime and protection of life and property. The difference between officers' effectiveness in dealing with white citizens and questionable effectiveness in dealing with others is based in societal racism.

The police, as traditionally composed of white officers and white administrators, enforce laws that have been developed by white legislators. As discussed in this and previous chapters, minorities were consciously excluded from this process. With the gradual, grudging integration of American society and police departments, residual problems from the former structure have become apparent. In the main, these problems are selective enforcement of the laws and a more general abuse of discretion.

Police carry out their law enforcement function based on a broad range of administrative and operational discretions. Kenneth Davis, author of Discretionary Justice and Police Discretion, states: "The Police are required by statute to enforce all criminal law, all statutes and ordinances . . . . The reality is that the resources are insufficient, and the practicality is that, of course, it is undesirable to have complete enforcement".[8]

While legislation requires full enforcement of the law, police lack the manpower, resources and clear policy directions to enforce every law fully. Thus, all laws are not enforced uniformly in any jurisdiction. The selection of which laws will be enforced is often made by police administrators. When the selection is biased by racist perceptions, the minority community is abused rather than protected. For example, when minority people are arrested for gambling on a street corner, yet the multibillion dollar illegal gambling industries thrive, minority perople are not served by the police. When minority youth are arrested in the barrios and ghettos of California for selling small quantities of marijuana, yet marijuana is recognized as one of the state's leading agricultural products, minority people are again discriminated against by those who decide which laws to enforce and where.

Further discretion in policing of which laws will be enforced, how, where, and when is also exercised by individual officers. The police decision to investigate, to arrest, or to do nothing has a profound effect on the lives of those with whom the police have official contact. In the exercise of discretion, minorities often experience a different standard of justice. For example, American Indians are more frequently arrested for drunkenness in situations where other citizens would be sent home to "sleep it off."[9]

The Council recognizes that police have and exercise discretion. However, the Council is concerned that minority people often receive discriminatory treatment from the police as they exercise that discretion, which results in the violation of the constitutional rights of minorities. Minority persons, for instance, are more frequently written up on Field Interrogation Cards by officers in departments where the cards are kept on persons deemed to be suspicious.[10] The inclination of many officers to equate suspiciousness with minorities drastically increases the likelihood of physical confrontation, when minority persons who are so stopped refuse to cooperate by providing the information requested or demand an explanation for having been stopped. Many officers equate such legitimate reactions with resistance, guilt or disrespect for authority and then participate in escalating the encounter to the level of altercation necessary to justify an arrest.

Another type of abuse of discretion occurs when minority communities are not adequately served by the police. Almost without exception, testimony presented before the Council on this topic alluded to the fact that the police are nonresponsive and insensitive to the issues of crime and corruption in minority communities. Minority peoples want to have a police force that protects them and serves their interest. They need police in the community to prevent crime. They do not need officers who, by the use of shakedowns, drunk-rolling and intimidations, become part of the community's problems.

Because the police must have authority to exercise discretion in the performance of their duties and to select which laws to enforce, the system is open to abuse through discrimination against minority citizens. To correct this problem, the Council recommends the adoption of internal controls. These controls must be placed throughout the department to be effective. They include the following:

a. Training Academy. Part of the training curriculum for recruits as well as for in-service officers must include a discussion of the proper role of discretion and how it should be exercised, and a recognition of the minority community's perception of its abuse. Police officers should be offered guidance in how to make equitable nonracist street judgments.

b. Policy Guidelines. Administrative policies relating to the enforcement of specific laws and other police action should be reviewed for consideration of their impact on the minority community. Any practice that can be identified as having a discriminatory effect that is not justifiable as the only possible method to achieve a legitimate law enforcement purpose must be revised.

c. Complaint Mechanisms. A system of redress for minority citizens who feel that they have been victimized by the use of discretion of selective enforcement must be developed. This should include investigation and review of the action, with notification to the complainant of the department's findings and corrective action taken.

With these steps, which can only be taken by police administrators, must come a new awareness of the effects of police behavior on minority citizens. Community input in developing the suggested controls not only will increase the likelihood that the controls will be effective, but will help bridge the gap between the police and policed.

2. The Structure of Policing

It is widely recognized that present-day U.S. police departments are structured on a military model, with a tightly controlled chain of command and carefully delineated divisions of responsibility. It is also recognized that minority participation within these departments has generally been limited, as has minority input on policing from without. Although the Council appreciates the usefulness of the military model, it questions the insularity of many police departments from impact by minority perceptions. Specifically, the Council has identified problems in police structures that have not been responsive to affirmative employment action toward minority persons, that have been unduly affected by police unions, and that have denied the need for police accountability to the community.

a. Inadequate Minority Representation. In city after city, the Council heard testimony that minorities were drastically underrepresented as members of police agencies. Where this condition has begun to be corrected, it has generally been through extensive litigation and involvement of the federal courts, rather than the recognition by police administrators of the valuable role played by minority officers or the legal and equitable requirement to hire minority officers.

The most thorough report on minority representation in policing was produced as part of the National Commission on Civil Disorders (the Kerner Commission) in 1968. Surveying 28 major cities with a total of 80,621 sworn officers, the Commission found that 7,046 of the officers in these cities, less than ten percent of total policemen, were minority persons, whereas the population in the surveyed cites was generally 40 percent non-white. The U.S. Commission on Civil Rights, in its 1981 report on police practices,[11] revealed that a distressingly low utilization of minority persons still exists, despite major employment litigation in cities such as Chicago, New York, Detroit, San Fransisco, Los Angeles, Milwaukee, New Orleans and Hartford.

Minority representation on the police force is crucial, both to reassure public perceptions about fairness and to ensure that fairness is fact. Adequate minority representation enables police departments to reflect the ethnic and racial diversity of the communities they serve.

In New York, for example, the Council was told that the department had only one Chinese-speaking person assigned to a precinct serving thousands in the Asian community. This officer was said to be able to speak only one of the several dialects spoken in the Chinese community. Thousands of New York Chinese residents who do not speak English are therefore left without a voice in their dealings with the police.

Adequate minority representation on the department can provide many subtle benefits, in addition to the obvious benefit of enhancing police response and service to that community. Externally, there is an improvement in police-community relations in the minority community when minority officers are present, which reduces the tension and distrust that plague police in their service to minorities. Minority officers aid in reversing the commonly held perception discussed earlier that the minority community is being policed to maintain the status quo rather than to maintain civil order. Internally, minority police officers can increase departmental insight into minority problems, as well as provide particular information about their communities.

The presence of minority officers at supervisory and command levels appears to affect decisively the problems between police and minority persons. The inclusion of minorities at this level facilitates the development of appropriate policies and practices within police departments, as recommended herein. The use of deadly force and filing of serious citizen complaints, for example, were dramatically reduced in Newark, Atlanta, and Detroit after the installation of black police chiefs in those cities.[12] To solve the problems caused by representation on the police force, therefore, requires a commitment from police administrators that must be publicly supported by elected officials.

Specifically, the Council makes the following recommendations:

- Hiring Practices Review. The job requirements of policing must be reviewed to ensure that there is a justifiable correlation between hiring standards and job performance.

- Promotion Practices Review. The criteria for promotion within the department, the administration of promotional exams, and the assignment to tasks that are preconditions to promotional consideration must also be reviewed for specific job-relatedness.

b. Police Unions. While formal control of the police is essentially an internal matter based on police organizational structure, rules, and regulations, informal control of police officers is increasingly being exercised by predominantly white police associations and unions. Although the unions were formed primarily to negotiate for their members on economic matters, they have made significant inroads in diminishing the management rights of police administrators. This influence has been coupled with a rising politicization that has emphasized the traditional conservativeness of white police officers.

Thus, in Detroit the white police union sued the department in an effort to stop implementation of a sound affirmative action program. And in Seattle and Akron, white police unions participated in legal and political action to stop enforcement of restrictive use of deadly force policies that police administrators had adopted.[13]

Unfortunately, the actions of police associations have frequently pitted them against the concerns of minority people. This polarization in both social and political beliefs of white and minority officers played a major role in minority officers' forming their own organizations. Minority officers are therefore able to speak out against the directions and positions of the predominantly white organizations when there is disagreement.

The Council's research in several cities revealed that white-dominated police associations are less inclined to be community oriented than minority police associations. Minority organizations are also more likely to focus on issues of brutality and discrimination within police departments, issues almost never addressed by white organizations.

The Council is concerned about the twin trends of racial polarization around substantive issues within the police ranks and the blatantly conservative challenges to the authority of police administrators who were acting in a responsive manner to minority community concerns.

To resolve these problems, the Council recommends the following:

- The role of unions should be examined. Police administrators and city officials must take a close look at the role they allow police associations to play within the department. Racial discrimination within the union must not be fostered by the department. Policy decisions that are appropriate management concerns should be prepared with union input but not union control.

- There should be inter-union cooperation. The unions themselves must examine the needs of their membership to perform their police role effectively and must work to fulfill those needs. In this effort, it must not be overlooked that a major need of white police officers is to achieve a greater understanding of and appreciation for minority concerns. To this end, white unions should seek to work with minority members of the department on substantive areas of mutual concern.

c. Police Accountability. The paramilitary structure of police departments, with their internal rewards and discipline systems, have most often remained relatively immune from public accountability. Unlike other institutions of government that are run by publicly elected officials or supervised by elected board members, the police department remains a relatively autonomous structure. There are no generally accepted mechanisms for ensuring that the police respond to public concern about their role or expressed needs for protection. There is no uniform requirement that the police develop adequate mechanisms for receiving and investigating complaints from citizens.

The Council found that there have been a number of attempts to resolve the issue of police accountability. Many of these attempts were minority community-based efforts to impose external accountability on the police. In Los Angeles and Jacksonville, for example, attempts have been made to establish civilian police review boards to receive and investigate misconduct complaints against the police.[14]

Such boards do exist in Berkeley, California, and a few other cities. These boards, which have been established over the last 30 years, have been generally ineffective because of the shortage of resources to support the independent investigations necessary, the lack of legal authority to subpoena needed documents and witnesses and to impose discipline, and the overall lack of police department cooperation with their efforts.[15]

The fact that civilian boards have not been very successful does not mean that there is no appropriate civilian concern. One method to redress minority grievances has been the political process. In Atlanta and Newark the election of non-white mayors was instrumental in the appointment of black police administrators who were responsive to minority problems. Such sensitivity, however, need not depend on the race of the individual involved. Citizens must work to ensure that problems in their police structure become an issue that can be resolved through the political process. Meanwhile, police departments must work to ensure that there is citizen input into policy making areas.

The Council makes the following recommendations:

- Open Administration of the Police Departments. Wherever possible, police administrators from mid-level managers to the department head must be open and receptive to citizen input. Where a structured process for this is not desired, then an attitude of receptivity must be conveyed. Police administrators should invite community response, advice, and criticism on general policies and practices.

- Open Response to Problems. When an incident occurs that generates concern from the community regarding police behavior, police administrators should respond with openness to the public. After proper investigation and review, which should include soliciting citizen comment, a report should be made available to the public that includes as much detailed information as is legally permissible.

C. Misuse of the Police Role

Through research, public hearings, and interviews with minority group members, the Council found that there is no issue so pressing to minorities in the administration of justice as that of misuse of police authority. When the street

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agents of the criminal justice system commit violent acts against citizens, when police officers become known in the minority community for their propensity to commit violence against minority persons, then the dormant hostility between these two groups becomes active, and the pursuit of justice is sullied.

When citizens who have been victimized by abusive police behavior have no recourse within the justice system, their perception that the system is structured to exclude their participation becomes fact. Police departments and the cities they serve can no longer afford to allow this to be so. To even begin to impact on crime, all segments of society must be included and recognized as having a legitimate voice in the effort. The minority voice will not be heard on these broader issues until abuse against minority citizens is halted.

1. General Abuse

The problem of general abuse against citizens by police officers seems almost routine in many cities. While the seriousness of the physical injuries inflicted cannot be equated with those caused by the use of deadly force, the disrespect and contempt for the rule of law such behavior engenders in its victims are immeasureable.

General police abuse includes verbal abuse, such as the frequent use of racial slurs. A policeman who gives the command "Get out of the car, nigger" adds a gratuitous insult to the psychological injury already caused by a police stop. It reflects a basic disregard for the integrity of the person encountered, and a lack of respect for the racial group of which he or she is a member.

General abuse also includes harassment of minority citizens. Routine stopping of cars driven by minority persons in predominantly white wealthy residential areas is harassment. So is routine ordering of minority youths off a certain street corner or out of a favorite park. Where such acts are taken by the police without a legitimate law enforcement purpose that would be agreed on by the whole community, then minority persons are being harassed.

General abuse frequently escalates into physical abuse such as kicking, punching, and slapping of prisoners. Once an arrestee has been subdued and handcuffed, any physical touching by police officers beyond the minimal required to direct the person is a simple and possibly a felonious assault. Unfortunately, minority police officers and citizens report that a swift kick in the ribs to a handcuffed suspect by the police is not unusual. Nor is it unusual for a prisoner, before being taken to the station house for booking, to be punched, slapped or shoved around.

In addition, the Council received many reports of general abuse that are committed through the misuse of equipment. Both in attempting to subdue a resisting suspect and, more important, after the suspect was under police control, it was reported as routine in many cities for the police to strike the person with a baton or lead-weighted flashlight, to spray mace in close proximity to the person, or to tighten handcuffs to a physically painful point. Also routine is the "rough ride to the station," which occurs when prisoners in police vans are purposefully driven over rough roads at high speeds, causing them to tumble helplessly against the vehicle sides and floor.

Beyond these problems of assault on the physical integrity of citzens is the misuse of the police role that unfortunately still occurs in some police departments in the form of political surveillance. Although the problem of domestic surveillance of political groups during the sixties is widely thought to have been halted, detective teams still exist in some cities that focus their activity on the legitimate First Amendment-protected acts of minority persons. Such conduct by the police is illegal. It is a serious overstepping of the authority granted police agencies to enforce laws. It is the single act that most clearly indicates to minority people that there are persons in policing who still perceive their role to be one of controlling and suppressing the minority community.

The Council recommends that, to stop the general abuse of minority persons by the police, the following steps be taken:

a. Training. One mechanism by which the abuse of minority persons has been fostered within police departments has been through the "on-the-job" training experience of new officers who are teamed up with experienced officers. This system serves the legitimate purpose of introducing recruits to hands-on experience early in their training. In departments where disrespect for minority persons has been fostered in the past, however, the team training system becomes a mechanism by which methods of general abuse are taught. How often it is repeated by rookie cops that, on leaving the academy, they are told by experienced officers "Forget what you learned in the Academy; now we'll show you how we really control the streets."

Police administrators must recognize this destructive phenomenon and work to engender respect for academy training throughout the department. Implicit in this effort must be affirmative steps taken both within and without the academy to impress on police officers that any general abuse of citizens will not be tolerated. Training programs should include a discussion of the variety of general abuse as outlined herein and should instruct officers on the legal and moral limits of their authority.

b. Administrative Mechanisms. Beyond the efforts of police administrators to train officers properly, including the effort to counter the effects of past practices that have been allowed to develop freely within departments, must be the development of internal controls on police behavior that are responsive to minority concerns. General abuse of minorities has been allowed to exist in the past not just through the active cooperation of police administrators, but through their passive acquiescence in a system that kept the details of such instances from their attention.

Police administrators, therefore, must restructure the supervisory duties of their managerial employees to ensure not only that general police abuse is discouraged, but that it is reported in writing when it is thought to have occurred. This includes reporting on the physical condition of prisoners when they appear for booking with obvious injuries or after a visit to the hospital emergency clinic. It includes responding effectively to citizen complaints of verbal abuse and harassment. It also includes closely monitoring the behavior of officers whose propensity for abuse is known. And it includes stopping official or unoffical political surveillance activities where such behavior still exists.

2. Misuse of Deadly Force

If the misuse of police authority is the key issue separating police and the minority community, then the specific problem of the misuse of deadly force is the major element within that issue. The misuse of deadly force has been a chronic concern of the minority community for decades. Because this problem involves the most serious abuse of the rights of minority persons that police engage in--the right to live--it deserves a separate and detailed examination.

The authority to use deadly force is granted to the police by society through the laws passed by state legislatures, and through the acceptance of the common practice of arming police that exists in the United States. This grant of authority is sometimes regulated by state law or departmental policy. But in too many juridictions it is not regulated at all.

Even where it is regulated by state law, the authority to use deadly force is, in reality, frequently restricted only by the individual officer's discretion. In the twenty-four states that have adopted the general common law principle of using deadly force to arrest a felony suspect, the only restriction imposed on the officer is that he or she must have a "reasonable belief" or "sufficient cause to assume" that life is endangered,

Fourteen states have attempted to define further when it is appropriate for an officer to use deadly force, but these attempts are still applicable only through broad officer discretion.

Seven states restrict the use of deadly force to "forcible felonies," or specified felonies such as murder, rape, burglary and arson. Seven other states attempt to balance the interest of the state in apprehending suspects and ensuring the safety of police officers with the broader societal interest in protecting human life. This approach expresses the most concern for the rights of minority citizens, who are the most frequent victims of police use of deadly force.

Internal policy guidelines on the use of deadly force that have been adopted by police departments are as varied as state laws. Indeed, many departments offer their officers no further guidance on when to shoot than referring the officers back to state law. Other departments amplify state law by providing their officers with descriptive information on when shooting is permissible. A few departments offer true guidance to officers coupled with concern for citizens by enacting administrative policies that restrict the use of deadly force to situations in which the suspect is endangering life.

Given that society has as yet articulated no generally agreed on standard for officers to follow in their use of deadly force, it is no wonder deadly force is used haphazardly, inconsistently, and with discriminatory effect on minority persons.

Dr. Lawrence Sherman, who conducted a national study of homicides committed by police, made several cogent observations regarding police use of deadly force. The most astounding finding of Sherman's study was the fact that "the police may be responsible for anywhere from four percent to seven percent of all homicides committed in the United States in recent years."[16] He further reported, "In certain cities, we know that up to 80 percent of the victims of police homicides are members of minority groups." Equally as significant, Sherman observed, "Of the police officers who kill people, 10 to 30 percent, depending on which city, are out of uniform, and therefore are not recognized as police officers." His study also reported "the majority of victims --about 55 to 60 percent . . . have been found to have weapons on them." While Sherman's findings are a cause for serious concern for police leaders and minorities, Arthur Kobler, in his national study of newspaper stories on police use of force, found that two-fifths were justified. Kobler also reported that only three out of 1,500 cases resulted in a criminal conviction of a police officer for homicide.[17] Both of these studies clearly indicated that police use of deadly force not only is a police problem but also adversely affects the community.

Although no accurate statistics are available on the number of minority people who die each year because of the police, some measure of the seriousness of the problem is reflected by the following information:

- Blacks were 9 percent of Seattle's population and 49 percent of the people shot by Seattle's police from March 1972 to May 1975.[18]
- Blacks constituted 46 percent of the people killed by official police action in 1975, while they only constituted 11.5 percent of the population.[19]
- Blacks constituted 28 percent of total arrests in 1968 and 51 percent of civilian deaths at police hands. Blacks accounted for 36 percent of arrests for major crimes in 1968, and less than 30 percent in 1964, a year in which blacks were 51 percent of civilian deaths.[20]
- From 1970 to 1973, of 248 individuals killed by the police while involved in alleged criminal activity, 73 percent were minority groups members, 52 percent were black, 21 percent were Hispanic and only 10 percent were white.[21]
- From 1960 to 1970, 9 Philadelphia police officers were killed by citizens, but 63 citizens died at police hands.[22]

These statistics indicate two problems of paramount concern to the Council. One, the data reflect a critical flaw in policing whereby the disproportionate killing of minority persons has been accepted as routine for years. Second, the difficulty in compiling such data accurately reflects a fundamental disregard for the lives of those who are so killed.

The prototypical shooting that raises questions about appropriate police behavior usually involves a young minority male fleeing the scene of an alleged property crime. A very common rationale given for the disproportionate number of minority youths shot under these circumstances is that minority youths are more frequently involved in such crimes.

However, an investigation of the circumstances in which minority and white youths are in contact with the police will frequently show that minorities are shot in situations identical to those in which whites are not shot. The disproportionate number of minority persons shot by police is not explained or excused by looking at minority involvement in crime, especially when circumstances are reviewed on a case-by-case basis.[23]

For example, the following incident involving a young black businessman and a white police officer was described during the Council's hearings in Chicago. Some questioned whether a white businessman would have received the same treatment.

> At 25, about all that Wallace Davis has left for him is the thin hope that justice will prevail. He is among the growing legion of Americans, some whites, but more often Blacks or Hispanics, Native Americans and those of Asian background who get ground up by the very criminal justice system which is supposed to protect them.
>
> The long nightmare for Davis began in June 1976 when he was shot in the back as an alleged robbery suspect by a white policeman. Ironically, it was Davis who had surprised two men in the act of robbing the rib house which he owned on Chicago's West Side. He was also the proprietor of a body and fender shop. After subduing the pair with his bare hands, Davis called the police. He waited 15 minutes and called again. They said someone would be there in 15 minutes. Meanwhile, the robbers managed to flee the place. Davis, fearing for what might be happening at the body shop, asked his mother to wait at the rib house and if the police should come to direct them to his other business so that he could give an account of what had taken place.
>
> As he was parking his car in the garage, two officers in a squad car drove up and with no word of explanation jumped out, grabbed Davis and proceeded to frisk him, cursing all the while that he was trying to explain that it was he who was the victim and not one of the robbers. They made him spread eagle while they searched him. Wallace said that he complied with their directives, but one of them

> viciously kicked his legs out from under him and as he fell on the ground, the officer, whose name was Joseph Freel, shot him in the back. He would later claim that Davis had made a motion as if he were going for a weapon and that he shot in self-defense. According to Wallace, as he lay bleeding and pleading with cops not to shoot or kick him again, Freel put his gun between Davis' eyes and said, "Die Nigger, die or else I'll kill you." Davis closed his eyes and thinking he was in fact dead, the cops called for an ambulance to take him to Cook County Hospital. His wound was entered on the record as a chest injury, although the bullet had plainly penetrated his back, worked its way through his chest and lodged in his liver. Davis was charged with attempted murder, but this was later reduced to two counts of assault and battery. He was manacled to his bed, between the series of operations which left him with half his liver. He was finally acquitted of all charges.
>
> Missing at the time of his arrest were his wallet and $317, his watch and a ring. As of this writing no criminal charges have been placed against the officer involved in the shooting. Davis has filed a $15 million civil suit against the Chicago Police Department. He has reportedly rejected a $200 thousand offer from the City in return for his dropping his suit.[24]

Another example, from the many that have been brought to the attention of this Council, is as follows:

> In 1973, a 17-year old black youth in Memphis, Tennessee, led police on a high-speed chase in his pick-up truck. After the vehicle was stopped at a roadblock, the victim and another teenager were beaten by officers in the course of subduing them. The 17-year old died of multiple head wounds several hours later.
>
> After an investigation, four of the officers were charged with murder and another four with the intent to commit murder.
>
> The outcome of the trial hinged on a crucial question: Did the officers have a reason to believe that they were chasing joy-riding teenagers, or did they think that they were involved with desperate criminals on the run? It was claimed that this question could be answered by police tape recordings of the radio broadcast during and immediately

> following the early morning chase. Ironically, the tapes were blank. A prosecution witness testified that this was caused by a "mechanical malfunction." All of the defendants in this case were acquitted by an all-white, all-male jury.
>
> On the following day, one of the officers was promoted to captain, and two others were promoted to sergeant.[25]

Other examples, culled from research and testimonies before the Council on deadly force, include the following.

- New York police officer Thomas Shea shot to death a 10-year old black youngster. The officer thought the youth, who was less than five feet tall, was a holdup suspect. He said the youth pulled a gun. Later it was discovered that the youth was in fact unarmed. Shea was tried and acquitted. Previously Shea had been charged by his department for beating an unarmed 14-year old with his revolver. Before that, Shea shot a 22-year old suspect who also was unarmed. A near riot resulted in South Jamaica because of Shea's treatment of minority youths.[26]

- In 1981, Leroy Perry was stopped by a police officer in Anne Arundel County, Maryland. When Perry reached under his seat to get the screwdriver that he needed to open his trunk, where his registration was kept, he was shot to death. The officer, who had twice previously been involved in controversial circumstances with his weapon, was acquitted by an all-white jury.[27]

The Council has reviewed many more cases of police use of deadly force against minority persons that reflect the myriad problems to be confronted on this issue. What is clear from this review is:

- Minority persons are not shot by the police solely for endangering the life of the officer or another person; and

- Minority persons are not shot by the police solely because of their involvement in serious crime.

The answer to why the police shoot minority persons is probably as varied as the situations in which the shootings occur. The root causes may be the same endemic problems of societal racism and minority community political powerlessness that were discussed previously. The causes on which the

Council has chosen to focus, however, are those that pervade the existing structure of the criminal justice system and that are susceptible to redress through conscientious action of those charged with administering justice in America.

a. Internal Police Department Administration. Police administrators must make maximum effort to see that deadly force is only used by their police officers when it is legally, morally, and factually justified. The Council believes that the use of deadly force is only justifiable when the suspect is endangering the life of an officer or another person. This is the so-called defense-of-life policy.

Police administrators must adopt clear policy guidelines on the use of deadly force. The fact that so many departments have no written policies, or policies that are vague and confusing, has contributed to the misuse of deadly force. When police officers and the public are able to understand clearly what is permissible and expected in this area, then their respective roles become certain. The officer will know when he may use his weapon and be supported in his action by the department and the community. The community will have a standard by which to evaluate the actions of the officers. Contrary to popular perception, scholarly research has proved that the adoption by a police department of a restrictive role on the use of firearms will result in neither an increase in crime nor an increase in risk to the police officer.[28]

Requiring police officers to use their weapons only in defense-of-life situations does not send a message to potential criminals that if they run fast enough their freedom is assured. Rather, it ensures that society does not condone the taking of life where no life has been endangered. Such a policy prevents police officers from rendering summary punishment and administering "street executions" in situations where capital punishment would not be applied.

To make such a written policy effective, the police administration must support it wholeheartedly. The chief must communicate to the ranks that this is a policy he believes in and takes seriously. The influence on police officers of the chief's attitude is a controlling factor in police management. In this critical area, there is no room for ambivalence at the top.

In addition to a strong no-abuse policy by the chief, there must be a similar commitment from the elected officials to whom the chief responds. In mid-1978, the Council's staff interviewed the mayor of Atlanta, Maynard Jackson, and asked him to respond to the issue of police killing minority citizens. The mayor candidly admitted that the city's elected officials are responsible for any violations by the police.

> The speed of the boss is the speed of the crew. Get a mayor who lets police brutality and police abuse happen, get a mayor who presumes that the police officer has done no wrong and can do no wrong, or get a major who, for example, politically is afraid to say that a police officer may have done wrong or get a mayor who does not set up a system to find out whether a police officer has done wrong, you're going to have police abuse.
>
> Citizens manifest their role through elected officials. If there is police brutality, it means that the mayor and the council members are not cutting it, they're not taking care of business. They ought to be unelected. It's as simple as that.[29]

Atlanta's mayor enforced his philosophy through policies that control police use of deadly force in that city. Immediately following his election in 1974, the mayor made it clear that excessive force by police would not be tolerated. Before his election, it should be noted, Atlanta had only three regulations governing the police use of weapons; however, those regulations did not include a policy governing the use of force.

Atlanta's policies are now based on the philosophy that the mission of the police includes a heavy emphasis on the value of human life. The policies are further based on an understanding that police use of force must be socially and morally warranted as well as legally justified. The policy on police use of force in Atlanta is similar to the Federal Bureau of Investigation's restrictive policy, which allows officers to shoot only in self-defense or in the defense of the life of others.

A study on police killings in Atlanta reported "All categories of assaults and homicides involving police personnel decreased since 1974,[30] the year Jackson was elected Mayor. Mayor Jackson's example of strong leadership and sensitivity to the community enabled that city to effect changes in its policies, and those changes, as the forestated statistics demonstrate, reduced considerably the number of citizens killed by police and the number of police officers killed by citizens.

To implement an adequately restrictive use of force policy, as was done in Atlanta, the entire departmental structure must be reexamined. The Council recommends that the following factors be considered:

(1) Hiring Practices. Psychological screening of new recruits should be implemented to evaluate any propensity of prospective officers for violence and racist behavior. Psychological counseling services should be provided to all officers, especially those who become involved in use of deadly force situations. The stress that is engendered in an officer after a shooting incident can affect future job performance and should be immediately diffused through counseling.

(2) Training Practices. Training curriculums should be revised to include lengthy analysis of shooting situations and in-depth instruction on when it is appropriate and necessary to shoot, versus when alternative methods of suspect capture and control should be used. Without such training, the police will continue to be subject to the charge that they take inadequate precautions to protect life.

(3) Administrative Review. Internal mechanisms for responding to a shooting must be devised. First, the officer-shooter should be relieved of his weapon and his command pending an internal investigation. Second, an immediate investigation must be conducted by departmental personnel who are not in the regular reporting line of the officer involved. Third, this report should be reviewed by an internal panel, which has the power to hear witnesses. Fourth, the panel should make a report to the chief, with a recommendation for his action. Fifth, the chief should issue his findings and communicate them directly to the officer, the victim or his relatives and the public. Without this mechanism for internal review, the police will continue to come under attack for callously disregarding the value of the lives that they have taken.

b. External Controls. The effort to stop misuse of deadly force involves elements of the criminal justice system beyond the police department. Lawmakers at the state and city levels have a responsibility to examine the unclear, indefinite grant of authority given to police departments in this area, and to implement statutes less subject to wide-ranging interpretation. As with departmental policies, the Council supports a strict state statute specifying that officers may use deadly force only in "defense of life."

City and county prosecutors also have a responsibility in this area to independently investigate shootings by police officers immediately after they occur. The Council endorses the efforts of cities such as Los Angeles and Denver, where local prosecutors have established, within their offices, independent units that are fully staffed with attorneys and investigators who conduct complete investigations of all officer-involved deaths. Such systems remove the very common problem of the prosecutor's lack of independence from the police department which provides him with its investigative report of a death that he has only to review. Compounding this problem is the fact that prosecutors rely heavily on police officers as witnesses in their general criminal caseload and are thereby reluctant to examine police behavior too closely. Such prosecutorial reluctance must be done away with. The structural model provided by the "Rollout" unit of the Los Angeles District Attorney's Office is the most effective method the Council has seen of dealing with this.[31]

State and federal agencies charged with civil rights responsibilities must also take an active and aggressive role in reviewing police behavior. The U.S. Department of Justice must take the lead in this area and use the resources at its disposal through the F.B.I., the Department's Civil Rights Division, and the U.S. Attorney's offices to investigate police misconduct.

If both police departments and prosecutors become more effective in identifying officers who misuse their authority to use deadly force, minority citizens will still face the reluctance of judges and juries to find a police officer culpable. Civil damage actions as well as criminal prosecutions for police misuse of deadly force frequently fail in the face of this reluctance.

To overcome this problem, which is one of attitude, citizens must join forces with the media, politicians, scholars, and identifiable community groups to force recognition throughout society of the problem of police misuse of their role. The social structure of the United States can no longer afford the luxury of turning over power to a segment of society and then turning a blind eye to what is done with that power. This was a key lesson of the Watergate era. In fact, as former Supreme Court Chief Justice Earl Warren noted, the individual policeman is more powerful than the president of the United States. Only the policeman has the power to deprive an American of his liberty, and only the policeman defines the real law of the land on a daily basis. Police execute citizens without the benefit of a trial when they use deadly force on the street. All elements of society are responsible for police action and must take action to exercise that responsibility effectively.

The Council makes recommendations in the following areas:

(1) Legislative Review. State laws should be revised to allow the use of deadly force by police officers only in life-threatening situations.

(2) Prosecutorial Review. Prosecutors must exercise their power to review police misconduct for evidence of crime. Independence of the investigators from the police departments must be fostered to accomplish this, in the spirit of cooperative effort to stop crime wherever it occurs.

(3) Public Attitude. Social responsibility must be exercised by all community members to recognize that police misconduct and criminal activity are an unfortunate fact and that when they occur, justice requires punishment of the officer as it would of any other law violator.

D. Conclusion

The history of interaction between the police and the minority communities in the United States has been a tense one. In the past, the police have been used as the front line troops of society's power elite in keeping minorities separate and controlled. When the legal structure adjusted to allow minorities equal opportunity, no concommitant adjustment was made by police departments to recognize this change. Minorities have not heretofore participated in defining the police role, the structure of policing, or the policies by which the police are governed. This exclusion has resulted in the serious problems of selective enforcement of the law, abuse of discretion, employment discrimination, lack of police accountability, abusive treatment, and the excessive use of deadly force. These problems are explosive frictions that keep historical tensions alive. The scope and intensity of hostility between police and minorities require law enforcement officials, elected leaders and citizens to jointly formulate effective remedies to the problems of police and policing which threaten both the public peace and the administration of justice in a democratic society.

The Council has found that the serious problems existing between the police and the minority community can be solved. The solutions are neither new nor revolutionary. The Council's recommendations in large part reiterate those of the U.S. Commission on Civil Rights in its 1981 Report on Police Practices, which this Council heartily endorses.

The Council's recommendations are similar to those made by the researchers and scholars who have looked into policing over the last 20 years. And the Council's recommendations are similar to those endorsed by such national minority organizations as the National Association for the Advancement of Colored People, the National Urban league, La Raza, the Mexican American Legal Defense and Education Fund, the National Organization of Blacks in Law Enforcement, and the National Black Patrolmans Association.

What is significant about these recommendations is that the Council is adding its collective voice to those that have for years identified the need for active minority participation in policing. Further, it is hoped that the addition of this report will stem the tide of resistance by local police departments to minority participation and that, finally, these recommendations will be implemented on a broad scale.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, Birmingham, Ala., September 1979.

2. Robert Wintersmith, *Police and the Black Community* (Lexington, Mass.: Lexington Books, 1974), pp. 1-37.

3. Solomon Northup, "Twelve Years a Slave," in *Puttin' in Ole Messa*, G. Osofsky, ed. (New York: Harper Torch Books, 1969), p. 356.

4. Thomas Chinn, ed., *A History of Chinese in America* (San Francisco: Chinese Historical Society of America, 1969), pp. 1-29.

5. David H. Bayley and Harold Mendelsohn, *Minorities and the Police, Confrontation in America* (New York: Free Press, 1968), pp. 1-31.

6. *Indian Law Enforcement History* (Bureau of Indian Affairs, Division of Law Enforcement Services, Washington, D.C., 1975), pp. 1-4.

7. Martin Luther King, Jr., *Where Do We Go From Here: Chaos or Community?* (New York: Bantam Books, 1968), p. 133.

8. U.S. Commission on Civil Rights, *Police Practices and the Preservation of Civil Rights*, Consultations (Washington, D.C.: Government Printing Office, 1978), p. 60.

9. Transcripts of the National Minority Advisory Council on Criminal Justice, Sioux Falls, S.D., Vol. 1, May 1978.

10. Joseph Lohman and Gordon Misner, *The Police Community* (Berkeley Office, 1965), pp. 97-99.

11. U.S. Commission on Civil Rights, *Who Is Guarding the Guardians?* (Washington, D.C.: Government Printing Office, 1981).

12. Transcripts of the National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, Mayor Maynard Jackson, Atlanta, Ga., June 10, 1978.

13. U.S. Department of Justice, Community Relations Service, *National Consultation on Safety and Force: An Oppor-*

tunity for Police-Minority Community Cooperation, (Washington, D.C.: Government Printing Office, 1979).

See also Akron Beacon Journal, September 29, 1981, p. 1.

14. Proposed ordinance 81-627, Jacksonville City Council, Jacksonville, Fla.

15. Hartford Institute of Criminal and Social Justice, "Civilian Review of the Police Experiences of American Cities," November 1980.

16. Lawrence E. Sherman, "What Do We Know About Homicide by Police Officers," in Police Use of Deadly Force, U.S. Department of Justice, Community Relations Services, (Washington, D.C.: Government Printing Office, 1978), pp. 9-15.

17. Arthur L. Kobler, "Police Homicide in a Democracy," Journal of Social Issues, No. 31, 1975, pp. 163-184.

18. Seattle Police Planning Division, "Use of Deadly Force by Seattle Police", Seattle Police Department, 1976.

19. Lawrence W. Sherman, "Execution Without Trail: Police Homicide and the Constitution," Vanderbilt Law Review, Vol. 33, No. 1, January 1980, pp. 71-100.

20. Paul Takagi, "A Garrison State in a 'Democratic' Society," Crime and Social Justice, Spring-Summer, 1974, p. 30.

21. U.S. Department of Justice, Police Use of Deadly Force, National Institute of Law Enforcement and Criminal Justice, Cynthia Sulton, ed. (Washington, D.C.: Government Printing Office, 1979), pp.69 - 78.

22. Ibid., pp. 79-84.

23. Chicago Law Enforcement Study Group, Split Second Decisions.

24. Chicago Defender, October 14, 1977.

25. U.S. Department of Justice, National Consultation on Safety and Force: An Opportunity for Police-Minority Community Cooperation, Summary Report, Community Relations Services (Washington, D.C.: Government Printing Office, 1979). pp. 28-69.

26. U.S. Department of Justice, Police Use of Deadly Force, op. cit., p. 35.

27. The Washington Post, October 24, 1981, p. 1.

28. Lawrence W. Sherman, "Reducing Police Gun Use: Critical Events, Administrative Policy and Organizational Change," Washington, D.C. (unpublished), 1980.

29. Transcripts, NMACCJ, Mayor Maynard Jackson.

30. Police Use of Deadly Force, pp. 20-27.

31. County of Los Angeles, Office of the District Attorney, "Rollout" Program Funding Application, 1979, 1980.

CHAPTER VI

THE INEQUALITY OF JUSTICE: THE COURTS

> So the struggle against racism continues. In recent years the battleground has largely shifted from the legislature and the repeal or enactment of statutes. The battleground today is the trial courts, especially the lower trial courts. It is in these tribunals that legally approved racism-classism flourishes in its most virulent form.[1]

In a society ostensibly governed by laws, the ultimate institutional safeguard against official tyranny must be the judicial system. It is the myth of this society that in the courts, passions are moderated, facts are presented, and a jury of peers reaches a verdict based upon conclusive and fairly presented evidence and an impartial judge whose unbiased discretion arrives at a just decision for the benefit of society.

Yet, concerns that judicial inequality and institutional racism threaten the capacity of the criminal courts to operate fairly, in fact and in appearance, were repeatedly expressed at the Council's public hearings and has been documented extensively by professional fact finders and scholars, especially since the civil disorders of the sixties.

Despite these reports and a plethora of others by scholars and public officials who recommend pervasive reforms in the criminal courts to lessen the number of miscarriages of justice perpetrated especially against minorities, the reality of injustice toward the minority defendant in the courts continues.

The President's Crime Commission, in a special 1967 report on the courts, found that racial prejudice, whether operating purposefully by jury selection and sentencing, or unintentionally, but inevitably, through inequitable burdens on the poor and those of cultures alien to majority people, permeates the judicial system.

> The law and court procedures are not understood by and seem threatening to many defendants, and many defendants are not understood by and seem threatening to the court and its officers. Even such simple matters as dress, speech, and manners may be misinterpreted. Most city prosecutors and judges have middle-class backgrounds and a high degree of education. When they are confronted with a poor,

> uneducated defendant, they may have difficulty judging how he fits into his own society or culture. They can easily mistake a certain manner of dress or speech, alien or repugnant to them, but ordinary enough in the defendant's world, as an index of moral worthlessness. They can mistake ignorance or fear of the law as indifference to it. They can mistake the defendant's resentment against the social evils with which he lives as evidence of criminality. Or conversely, they may be led by neat dress, a polite and cheerful manner, and a show of humility to believe that a dangerous criminal is merely an oppressed and misunderstood man.[2]

The U.S. Commission on Civil Rights drew similar conclusions in its report which stated:

> Our investigations reveal that Mexican-American citizens are subject to unduly harsh treatment by law enforcement officers, that they are often arrested on insufficient grounds, receive physical and verbal abuse and penalties which are disproportionately severe. We have found them to be deprived of proper use of bail and adequate representation by counsel. They are substantially underrepresented on grand and petit juries and excluded from full participation in law enforcement agencies...the ability to communicate between Spanish-speaking American citizens and English-speaking officials has complicated the problem of administering justice equally.[3]

This chapter highlights and examines some of the critical issues of concern to minorities in the operation of the criminal courts as identified by Council members, as reflected in research studies and as corroborated by the testimonies of minority citizens at the Council's public hearings. Particular attention is paid to the criminal courts and their performance by examining their effectiveness and fairness in the adjudicatory process. Analysis is also focused on important nontrial elements, including the prosecutor's discretion in making charge decisions, bail and plea bargaining and the paucity of minority representation as court personnel. While this chapter is not comprehensive in its analysis nor in its description of the legal system's methods of dealing with minorities, it does identify those primary abusive patterns and practices within the courts which blatantly violate the constitutional guarantees of equal protection of the law for minorities, and further challenges the courts to improve those aspects of their operations most in need of reform to ensure equal justice for all.

A. A Minority Historical Perspective on the Courts

Minority attitudes toward the courts and the legal process can be understood by examining the historical and legal relationship of racial status to the enjoyment of the rights and privileges of citizens. American Indians, blacks, Hispanics and Asian-Americans have been systematically denied economic, social and political advantages enjoyed by the majority from the colonial days to the present. Historically, minorities have not experiencd the full benefits of equal justice under the law as guaranteed by the Constitution and as afforded to majority citizens. Until the middle of the twentieth century, such full legal rights were frequently denied minorities as a function of laws and as a matter of pattern and practice of conduct both within and without the legal system.

Other sections of this report document the various and specific forms of racism and ethnic exclusion that adversely affected each minority community as well as the legal and historical facts that have sanctioned practices of inequality and discrimination, both *de facto* and *de jure*.

Careful examination of this history regarding minorities and the courts is necessary to understand how the courts, through their conduct and legal opinions, historically have created and fostered distrust and suspicion of the courts and the legal system. Minorities are acutely aware of the role of the courts and laws in defining their inferior status, an understanding which was made abundantly clear in the many testimonies to the Council from minority citizens from all economic strata as well as the input of minority judges and lawyers.

B. Minority Perceptions of the Courts

The dominant attitude of minorities testifying at Council hearings was their sense of frustration regarding the courts, the legal procedures, and practices. In the words of one witness:

> For most Chicanos sitting in jails . . . . the day of "trial" it is something to be dreaded. It will not be the traditional "day in court." They sense that they *will not* be adequately represented by the court-appointed attorneys; that they will not be judged by a cross section of their community--very few jurors selected to serve on petit juries come from the barrios. Most Chicanos cannot even effectively communicate with their Anglo lawyer, the judges or the prosecutors.

> For the most part, Chicanos feel awed by the power of the court, they are frightened by lawyers who do not wish to make the judge or prosecutor mad; they know little of what legal rights they have; they are lost in the procedural maze that the trial entails.
>
> It is not surprising that with their feeling of helplessness, most Chicanos will not even attempt to exercise their right to trial by jury. To them it is a futile process culminating in conviction and, therefore, the wisest course is to bargain for a lesser punishment through guilty pleas--even when they are not guilty.[4]

A black lawyer described the situation of black defendants similarly. Asserting that even the physical layout of the courtroom increases this sense of helplessness, he vividly described the view of the courtroom from the minority defendant's perspective:

> Everything looks stacked against the defendant, and things always look pro-prosecution: from the demeanor of the court officials to the very structure of the courtroom itself. Witnesses for the prosecution are more often than not coddled or appear to be coddled. They are given seats, for instance, in the prosecutor's office while they await the opportunity to go and testify whereas the defense witnesses must sit in the courtroom. The defense attorney, in order to huddle with his witnesses, more often than not has to pull them over in a corner and talk in a little circle with them and the prosecutor has the advantage of the privacy of an office that he can sit down and make his people comfortable.[5]

Another example of courtroom conduct described by the black attorney suggests collusion between the prosecution and the judge given the instances of informal conversation between the prosecutor and the judge during breaks in the court session. Such conduct in courtrooms is perceived adversely by poor and minority defendants and their families as further evidence of their powerlessness in a society which imposes disparate judicial treatment on minorities. The "outsider" status felt by many minorities is further compounded by the severe underrepresentation of minorities on juries, as defense lawyers, as prosecutors or court personnel and, most importantly, as judges. The scarcity of minority men and women working in the judicial system is a universal and abiding source of concern to all minorities.

Other problem areas repeatedly mentioned by citizens before the Council were (1) The abuse of prosecutorial discretion resulting in overcharging and indicting minorities accused of crime, paving the way for plea bargaining; (2) discriminatory and inequitable bail practices, (3) overworked and indifferent public defenders; and (4) disparities in sentencing. American Indians, for example, testified that many judges will not release even first offenders on their own recognizance (ROR) despite their roots in the community because the court assumes that they will "run back to the reservation." Whites, according to the Sourcebook of Criminal Justice Statistics,[6] receive an average sentence of 53 months for the federal offense of assault. Nonwhites, however, receive an average of 65 months for the same offense. Witnesses also emphasized the greater likelihood of the imposition of probation or other sentencing alternatives for white defendants. In addition, minority citizens at the Council's public hearings complained frequently of the denial of parole to nonwhite prisoners.

1. Discriminatory Pretrial and Adjudicatory Processes

a. Bail. In the United States, one of the cornerstones of the administration of justice is the presumption of innocence until guilt is proved. The bail system should seek to accomplish two essential tasks critical to ensuring this important civil right. First, it is necessary to recognize the right of the defendant to remain out of jail until proved guilty. He or she can then continue his or her normal activities and have an opportunity to help in the building of the defense. Second, the bail system should take into consideration the obligation of the defendant to appear for trial at an appointed time and seek to ensure the fulfillment of that responsibility. The primary functions of the bail system, then, are to balance the defendant's rights with his obligations and to replace the presumption of guilt associated with jail confinement with establishment of guilt "beyond reasonable doubt" at trial. In Stack v. Boyle 342 U.S. 1 (1951) the Supreme Court established the legal basis for bail:

> This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction . . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.[7]

Unfortunately, this safeguard of defendants' rights is too often ignored in the nation's courts. Blacks, for example, are four times more likely than whites to be jailed because of bail practice inequities. In the Detroit ghetto rebellion of 1967, discriminatory courtroom practices were overt and well-documented. A total of 7,200 persons were arrested. Virtually all of these were indigent blacks. Of the 4,260 persons brought into Recorder's (Detroit Municipal) Court, 3,230 were charged with looting, a five-year felony, a charge which also was the basis for high bail and extended delay in processing the cases. Almost half of these felony cases were ultimately dismissed at the prelimnary hearings for lack of evidence.

In each of these 3,230 felony cases, the prosecutor demanded and was granted by most judges, $10,000 to $20,000 bail per person. This high bail policy continued for six days. People with long residence records, regular jobs and no previous police records found themselves isolated in maximum security prisons, without benefit of counsel or any semblance of due process. Judge George W. Crockett, Jr., concluded:

> Racist? Try to imagine what our system of justice --and those who administer it--would have required if these defendants had been white or rich. Hundreds of cases can be cited to show that for such defendants personal recognizance would be the only requirement for their immediate release.[8]

That the bail process is applied in a discriminatory manner is evident not only in times of social crisis, for the bail bond system discriminates against minorities and poor people daily. In a 1970 study of the lower criminal courts in Boston, a group of lawyers investigating court practices where minorities constitute the major portion of the caseload found, among other things, that in urban as opposed to suburban courts bail was set by reference to the charge and the defendant's prior record, rather than by reference to factors such as roots in the community, family ties, length of residence and job and financial status. This was done even though there was a state law requiring release of the defendant on his own recognizance unless the court affirmatively found such release would not reasonably ensure his presence at trial.

This same study found that a series of pressures were exerted on a defendant to discourage him from appealing a guilty verdict in the lower court, which would entitle him to a trial new trial before a jury in a higher court. For example, a defendant was offered a suspended sentence or probation for waiving his right to appeal, or a jail term and a higher bail if he insisted on appealing. While the Boston study focuses on the poor defendant in the urban courts, the study also identified sharp differential treatment by race even among the poor. Fifty-two percent of all black defendants who sought trial *de novo* were committed for failure to make bail; yet only 29 percent of whites found themselves in similar circumstances.

Bail procedures vary from state to state and within each state. (It is on the state level that most poor and minority defendants are adjudicated.) A sample of this state procedures demonstrates the variance:[9]

State and County (City)	Bail Procedures
New York, New York	Bail is set by the magistrate (criminal court) at first arraignment. The district attorney often makes recommendations which may influence the magistrate's decision. A bail schedule is not used. In capital cases, or where the victim is near death, or where the defendant has certain prior convictions, the criminal court has no authority to fix bail, but application must be made to the Supreme Court. N.Y. Code Crim. Proc., Sec. 552 (1965)
Virginia, Henry	Justices of the peace, who are not lawyers, usually set bail from a schedule. In very serious cases they may commit an accused to jail pending the recommendations of the county judge. Typical amounts are: traffic misdemeanor, $750 maximum; aggravated misdemeanor, $1,000 maximum; simple felony, $1,000; capital felony, $2,500 for white persons or $1,500 for Negroes. [sic]
Minnesota, Hennepin (Minneapolis)	Detailed bail schedules are used by the county attorney's office, which recommends bail to the magistrate. Typical amounts are: 1st degree assault $5,000; 1st degree burglary $5,000; carnal knowledge (10 years or older) $1,000; carnal knowledge (under 10 years) $5,000; 1st degree forgery $1,000; 1st degree grand larceny $1,000; 1st degree manslaughter $5,000; 1st degree murder $10,000; rape $5,000; 1st degree robbery $5,000. Higher bail is recommended in aggravated situations or unusual circumstances.

In New Jersey, for example, in 1979, some counties permitted a 10 percent cash equivalent, in others they did not, so that a defendant had to provide collateral or cash equivalent to the total bail required. All of these bail practices require, in most cases, a poor defendant to seek assistance from professional bail bondsmen who profit from "cash" bail procedures by charging at least the maximum fee and often additional high under-the-table fees.

Because many minorities are also poor people, this profitmaking aspect of the judicial process of setting bail denies them equal access to pretrial release with all of its advantages in helping to prepare one's defense for trial, locating witnesses and maintaining one's family and economic life. Circuit Judge J. Skelly Wright commented on this situation in the District of Columbia:

> As independent businessmen, bondsmen are free to reject prospective clients without regard to the consequences to the accused. Certainly, the professional bondsman system as used in this district is odious at best. The effect of such a system is that the professional bondsmen hold the keys to the jail in their pockets. They determine for whom they will act as surety--who in their judgment is a good risk. The bad risks, in the bondsmen's judgment, are the ones who are unable to pay the bondsmen's fees and remain in jail. The court and the commissioner are relegated to the relatively unimportant chore of deciding the amount of bail.
>
> Bondsmen often evaluate "good" and "bad" risks on grounds quite similar to judicially approved criteria, e.g., community ties, local residence, family and employment. In New York, Philadelphia, and the District of Columbia, bondsmen try to avoid narcotics defendants ("they usually don't wake up on time to get to court"), prostitutes ("they have no roots"), forgers ("they travel too much"), scofflaws, and alleged subversives ("bad publicity"). Because of the speed with which the bondsman's decision is made, it is often based on intuition. Other reasons for rejection illustrate basic defects in the bail system. For example, a "nominal" bail amount may be too small for a bondsman to bother with; and some bondsmen prefer professional criminals who know the rules, over mature offenders who may panic. Bondsmen have been charged with conditioning their services on the accused hiring a particular lawyer, or paying illegal overcharges, or giving desirable treatment to criminal syndicates. On occasion, bondsmen have been charged

with denying bail in order to embarrass unpopular judges and prosecutors and with refusing to post bail for unpopular minority people.[10]

In addition to economic discrimination built into the bail system, minorities must also contend with blatantly racist and politically repressive application of bail laws; for example:

(1) Judges imposing on them the legal maximum bail set in bail schedules;

(2) Judges imposing exorbitant bail when conspiracy to commit murder and other major crimes are alleged. (See, for example, the New York Black Panther cases, where defendants were held for almost two years because of high bail; see also, Puerto Rican Nationalist and American Indian Wounded Knee cases.);

(3) Judges imposing extraordinarily high bails for comparatively minor offenses; e.g., (a) in Atlanta, Georgia, $15,000 imposed on an eighteen-year-old student arrested in a civil rights demonstration and charged with trespassing, a misdemeanor; (b) in Chester, Pennsylvania, a minister arrested in a civil rights demonstration and charged with unlawful assembly, bail $26,500;

(4) Minorities being charged with serious felony charges at the time of arrest which imposes high, and often impossible, bails and then having the felony charges downgraded to a misdemeanor when the individual is finally processed by a judge or prosecutor after long pretrial detention;

(5) Minorities being held on multiple charges (loitering, disorderly conduct, assault on a police officer) and bail is imposed to the legal maximum for each separate charge.

The influence of pretrial release of an accused on the ultimate disposition of his case cannot be overemphasized. The Vera Foundation of New York, which has developed the models for ROR programs that are being instituted in many parts of the country as a mode of bail reform, has researched this issue extensively. The research shows that 60 percent of those who are released pretrial are acquitted or have their cases dismissed compared with 23 percent of those who are held in pretrial detention. Moreover, of the 40 percent who were found guilty out of the released group, only one out of six was sentenced to prison, in contrast to 96 percent of those convicted after pretrial detention.

Abuse of bail practices in courts adversely affects minority pretrial detainees and their families. Alternatives to cash bail and illegal preventative detention are theoretically available to most arrestees; denial of these procedures, within the discretion of the courts, is another flagrant example of the disparate ways in which the criminal justice system treats poor and non-white people at every stage of the criminal justice process.

b. Jury Selection. Selection as a grand or trial juror is the only opportunity that the average person has to participate actively in the administration of justice. Such participation is a fundamental prerogative of citizenship. A grand or petit jury with minority members considering a criminal case is more likely to consider cultural factors which are alien to an all-majority jury and is less likely to act on majority stereotypes and have prejudices against minority defendants.

The exclusion of minorities from juries has been and remains a central problem in the administration of criminal justice. Since 1875, discrimination in selecting or summoning jurors has been a federal crime punishable by a fine of not more than $5,000. It has long been settled in law, in general, that the exclusion of a particular racial group from jury service gives rise to an unconstitutional denial of equal protection of the law. The post-Civil War Supreme Court had little difficulty in holding that a black defendant charged with a crime was entitled to be tried by a jury from which members of his race were not systematically excluded, as in the case of Strauder v. West Virginia, 100 U.S. 303 (1879). In Alexander v. Louisiana,[11] the court reversed a black defendant's conviction because the grand jury selection procedures were not racially neutral and the statistically small number of blacks selected posed a prima facie case of racial discrimination that the state failed to rebut. These are helpful rulings, but hardly adequate to guarantee minority defendants a trial by jury of their peers. Supreme Court decisions such as Swain v. Alabama[12] make it legal and relatively easy for minorities to be excluded from juries, even when they live in the community in substantial numbers. The systematic elimination of potential minority jurors through the use of the preemptory challenge is one significant method of minority exclusion.

In Swain, the defendant showed that the prosecutor's use of the preemptory challenge had systematically and consistently excluded blacks from the juries in Talladega County, Alabama, in which the trial was held. The majority of the court held that, unless the defendant could show that the prosecutor was not "acting on acceptable considerations related to the case he is trying," this use of the preemptory challenge was acceptable and Mr. Swain's conviction was upheld. "We have decided that it is permissible to insulate the removal of Negroes from a particular jury on the assumption that the prosecutor is acting on acceptable considerations related to the case he is trying, the particular defendant involved and the particular crime charged." After this case, the right to a fair trial for minorities is restricted only to those fortunate few who can afford highly skilled counsel.

Jury lists are compiled from a variety of sources. Some are seemingly objective and, therefore, racially neutral, as in voter registration lists; others, such as in Wisconsin and West Virginia which have no specified source, have great potential for bias, despite the abundance of case law. The most common subjective method used in some states, many state grand juries, and some southern federal courts is the notorious "key men" system. The court selects a prominent member of the community who in turn selects prospective jurors. The key men usually are white and men of property who "know" few members of minority groups or poor people.

Jury panels drawn from objective sources are equally unlikely to result in a given jury panel representing an ethnic, economic, racial and cultural cross section of the population in the court's jurisdiction. First, registered voters are typically property owners or persons with a high degree of residence stability. Transients, or those whose work involves frequent change of residence, are automatically excluded. Second, minorities such as American Indians, Hispanics and blacks, who have been discouraged from exercising suffrage, are underrepresented on voter rolls. Third, blue collar and hourly workers, whose salaries will reflect the hours lost in jury duty, will seek to be excused from jury duty as opposed to salaried persons, since jury compensation is negligible. Fourth, certain categories of persons are either excluded from jury panels automatically or usually excused from service, such as young mothers, students, members of the legal profession, holders of elective office, doctors and nurses, clergymen and public school teachers.

Because of these factors, even "objective" methods of developing a jury panel tend to result in a middle-aged-to-elderly, middle-class, ethnic and cultural majority jury panel. The right to exercise a number of preemptory challenges by both prosecution and defense further increases the probability of a majority middle-class jury, since each challenge of a member of an underrepresented group by the prosecution decreases the relative representation of that group on the panel to a greater degree than does challenge of a member of the overrepresented group.

In "Cultural Bias in the American Legal System," Dr. Swett provides the following analysis of how this race and economic class exclusionary process operated in Oakland, California.[13]

In a controversial trial of a member of an ethnic minority accused of the murder of a police officer, jury selection took 14 court days. Although at least 40 percent of the population of the municipality in which the offense occurred was black, the jury panel was drawn from the county roll of registered voters and consisted of 160 persons, of whom 27 were nonwhite. Of these, 22 were black. After excuses for cause and preemptory challenges, the ethnic composition of the jury and four alternates were one black, one Japanese-American, one Latin-American and 13 Caucasians or European descent. Occupationally, the jury and alternates were composed of three salespersons, two bankers, one secretary, one bank secretary, one laboratory technician, one surveyor, one aircraft instrument technician, one machinist, one paper company employee, one aircraft catering service employee and three housewives. Of the latter, one was married to a member of a municipal fire department and one to a forklift driver. Table VI-1 shows the disparity between the ethnic composition of the jury panel and the jury (including alternates):[14]

Table VI-1

Ethnic Composition of Jury Panel in Oakland, California

	Percent of European-descent Caucasian	Percent of Black	Percent of Other
Panel	83.1	13.8	3.1
Jury and alternates	81.25	6.2	12.5

These methods of empaneling a jury and its probable composition render the high probability that a minority defendant will be tried by a middle-aged, middle-class jury whose cultural attitudes are sympathetic to the dominate political and economic structure of the community and seriously damages a minority defendant's right to a fair trial.

Other less obvious issues which discourage minority and poor people's participation in juries, even if called, include (1) the increasing lack of public transportation to court houses in county seats far from outlying districts in rural areas and "downtown" in cities; (2) the lack of day care centers or other child care areas for parent-jurors who cannot afford baby-sitters; and (3) insufficient juror stipends to cover the costs of carfare, parking and lunches. Minorities are also reluctant to serve on juries because of their beliefs that their input would be ignored by the majority. Further, many minorities are discouraged from serving on juries because they doubt that the judicial process will, in fact, render justice equally. Minority experiences in the judicial sphere historically contribute to these misgivings regarding the courts.

Grand jury service presents even further special problems to the inclusion of minorities and poor people, in addition to those issues already discussed. Grand juries are typically selected by some version of the key man method. Unlike trial jurors who sit on a few short civil or criminal matters or one long case, grand jurors may sit for a term of a year or more. Their duties are often twofold: to hand down or refuse criminal indictments and to inquire into the conduct and administration of local government including welfare systems, police practices, governmental hiring policies, and the like.

Exclusion of minority and poor people from grand jury services may have even broader impact on the minority community as a whole than exclusion from individual jury trials since a representative grand jury could prevent, punish or restrain official misconduct toward minorities; might consider minority complaints against local government for failure to provide adequate services; could investigate charges of police or other official misconduct within its criminal jurisdiction; and further, could, with or without the consent of the prosecutor, indict anyone for crimes against minority people.

The limitations described previously in the selection of petit jurors are intensified in the selection of grand jurors who must, by the tenure of their service, be able to serve for months at a time with only token compensation.

Finally, serious consideration must be given to the impact of six-person juries and nonunanimous verdicts on minority defendants. In Williams v. Florida,[15] the U.S. Supreme Court held that a six-member jury in a criminal case was permissible. Subsequently, the Task Force on Courts of the National Advisory Commission on Criminal Justice Standards and Goals proposed a national minimum standard of six-member juries in criminal cases.

Task Force member Stanley Van Ness, public defender and public advocate of the State of New Jersey, and a black lawyer, alone dissented from the majority report in this matter with the following reasoning:

> The question before the Courts Task Force, in my judgment, is not whether a 12-man jury is constitutionally required, but rather, whether there are sound policy reasons for establishing a jury of a lesser number as a standard to be followed throughout the United States. Apparently, the justification for the recommendation that six-member juries be instituted is that the procedure would result in a savings of time and money in the jury selection process. No showing was made, however, that, in those few states that now require smaller juries, their utilization results in any appreciable savings, and I feel that the abandonment of a practice that has existed for more than 500 years should be supported by more than intuitive judgment.
>
> My concern for the retention of the 12-member jury is not the result of blind adherence to tradition. Rather, I am concerned that the reduction in the number of jurors may work to the disadvantage of persons accused of crime.
>
> A defendant in a criminal trial is entitled to a jury of his peers, one that ideally represents a cross section of the community. It seems obvious that a jury of six will less likely provide a cross section of the community than will one of twelve.
>
> Further, I question whether the smaller jury will not have the effect of easing the prosecutor's burden of proof. It would seem that it would be easier for him to convince six rather than twelve, that he has met his burden. Moreover, the reduced size of the jury would make the possibility of a hung jury less likely. I am of the opinion that the possibility of a hung jury is an integral part of the concept of reasonable doubt, which, in turn, is the very cornerstone of the criminal process.[16]

Commissioner Van Ness's reasoning in respect to the retention of twelve-member juries is equally valid for minority people with respect to the nonunanimous verdict made possible by the Supreme Court in Johnson v. Louisiana and Apodaca v. Oregon,[17] when the court held that a unanimous verdict in state criminal proceedings is not constitutionally required.

c. Adjudication. Minority citizens also expressed outrage at manifestly racially disparate treatment during trials at every stage of the proceedings. The abuse of prosecutorial and judicial discretion is a source of particular concern. Examples of abuse of discretion were traced to the

1950s and 1960s. Southern officials vigorously prosecuted and convicted civil rights activists for disorderly conduct and breach of the peace, while ignoring the violent acts against demonstrators committed by white segregationists and racists.

Although most of these convictions were substantially overturned by the Supreme Court, southern judges effectively discouraged demonstrations by holding protesters under exorbitant bail, requiring surety bonds which local bondsmen refused to sign, imposing harsh sentences for minor charges and placing demonstrators in barbarous confinement. Blacks arrested after the Los Angeles and Detroit rebellions in the 1960s were treated similarly.

More recently, in 1974, state and federal prosecutors testified at an ultimately unsuccessful appeal of the conviction of the "Charlotte Three" (civil rights activists James Grant, T. J. Reddy, and Charles Parker) for burning the Lazy B Stables and killing fifteen horses in Charlotte, N.C. State and federal prosecutors made secret deals with two key prosecution witnesses against the imprisoned Charlotte Three. The prosecutors admitted that they did not disclose to defense attorneys that the witnesses would receive "relocation assistance" including cash payments of $4,000 each from the federal government in exchange for testimony. The prosecutors also testified that one witness would not be prosecuted for a probation violation if he testified or that one of the prosecution's witness was a suspect in five unsolved murders in the community.

In 1977, the battered body of Jose Campos Torres was found in a Houston, Texas, bayou three days after he had been arrested in a bar disturbance. The officers were tried and found guilty in state court of criminally negligent homicide, not first degree murder, which the state prosecutor selected to prosecute as a misdemeanor. The policemen received a year's probation and a probated $1,000 fine each from the state court judge. A federal civil rights indictment was then sent down, after the Mexican-American community expressed its outrage, charging the police officers with conspiring to violate Mr. Torre's rights with his resultant death. The federal judge sentenced them, after conviction by a federal jury, to one year in prison on a misdemeanor count for beating Torres and gave them ten-year suspended sentences, probated for five years on the felony count of conspiracy to violate his civil rights.

d. Plea Bargaining.[18] Discretionary power gives the prosecutor the capacity to select minor charges for the acts of some and to select multiple serious charges for the acts of others, or not to indict at all. The power to obtain multiple indictments against poor and minority people who cannot manipulate the system to their advantage leads to egregious abuse in the plea bargaining process--the central technique for disposing of cases by settlement by prosecutors and defense lawyers of the issue and degree of guilt of a defendant because each, in the words of the Supreme Court in a recent case, "[has] his own reasons for wanting to avoid trial." An analysis of this recent plea bargaining case is most instructive in terms of the abuses of the plea bargaining issue. In Bordenkircher,[19] the Supreme Court extended new powers to prosecutors to seek guilty pleas from defendants instead of going to trial. Former Justice Potter Stewart, writing for the majority, acknowledged that previous court rulings had forbidden authorities from "punishing" a defendant for exercising his constitutional rights to trial or appeal. But Stewart wrote "in the 'give and take' of plea bargaining, there is no such element of punishment or retaliation so long as the accused is free to accept or reject the prosecution's offer."

In Bordenkircher, Hayes, the defendant, was indicted for forging an $88.30 check--a crime punishable in Kentucky by a term of two to ten years. The prosecutor offered to recommend a five-year prison term in exchange for a plea of guilty by Hayes. The prosecutor also told Hayes that in view of his two previous convictions (one for robbery and one for detaining a female) if he did not plead guilty to the check charges, charges would be brought against him for being a "habitual criminal." The defendant could be sentenced to life in prison for this charge. Hayes turned down the deal and stood charges on forgery and new charges as a habitual criminal and was subsequently convicted. He was given a life sentence. On appeal, former Federal Judge Wade H. McCree, Jr., overturned Hayes' life sentence, concluding that it was "the result of the vindictive exercise of a prosecutor's discretion." But the Supreme Court reversed the Appeal Court and, in so doing, widened the limits of prosecutorial discretion. The plea bargain process was given judicial validation because it could be "mutually advantageous" to both prosecutors and defendants.

In his opinion Justice Stewart said that, in trying to persuade a defendant to plead guilty and forego his "right to trial," a prosecutor was justified in threatening to bring more serious charges so long as the prosecutor had evidence that could support those charges. Although Stewart indicated that there were constitutional limits to prosecutorial discretion, in this case, he said, the prosecutor had done "no more than openly present the defendant with the unpleasant alternatives of foregoing trial or facing charges on which he was plainly subject to prosecution. . . ." The dissenting justices--Thurgood Marshall, William Brennan, Harry Blackmun and Lewis Powell--emphasized the most serious aspects of prosecutorial abuse against minorities: the "overcharge," that is, indicting a defendant with a serious, perhaps unsustainable, charge first and then offering a deal based on a lesser charge in exchange for a plea of guilty. The dissenting justices said that prosecutors should be required to decide the appropriate charge to bring against defendants before starting plea negotiations. The "openness" of the negotiation would be enhanced "if the prosecutor disclosed indictment, rather than with unrecorded verbal threats of stiffer charges." Justice Powell in a separate dissent said that the prosecutor, by bringing lesser charges first, had implied that the more serious charges were unreasonable. Justice Powell said further:

> The prosecutor's actions denied [Hayes] due process because their admitted purpose was to discourage and then to penalize with unique severity his exercise of constitutional rights . . . . Implementation of a strategy calculated solely to deter the exercise of constitutional rights is not a constitutionally permissible exercise of discretion.[20]

This recent Supreme Court decision has entrenched this mode of negotiation between prosecution and defense even more firmly into the court process as a means of disposing of criminal cases from overcrowded court dockets. It can be anticipated that poor and minority defendants will be even more likely to waive their constitutional right to trial in hopes of leniency in exchange for the plea, especially if the defendant is under pretrial confinement. The quality of defense counsel available to indigent minority defendants is now even more significant.

e. *Representation by Counsel*. Representation by counsel is an integral part of our adversary system of justice. The right to counsel is one of the most fundamental of the due process rights guaranteed the individual in court. If the courts are essential to justice, adequate representation by counsel is essential to the courts. Structurally, law can be an esoteric maze to the layman and particularly to the poor and to minorities who historically have been denied access to power in the United States. The traditional operation of the courts and of police has caused most minority group citizens to trust neither. Their confidence, therefore, must rest with counsel.

The legal right to counsel dates back to *Powell* v. *Alabama*,[21] in which the Supreme Court guaranteed counsel to an indigent accused of a capital crime. The doctrine was extended to anyone accused of a felony in *Gideon* v. *Wain-*

wright, and to anyone accused of a crime with incarceration as punishment in Argersiner v. Hamlin.[22] The necessity of counsel at "critical stages" of the accused was decided in Coleman v. Alabama and Kirby v. Illinois.[23]

In sum, the Supreme Court has clearly established the right to counsel of an indigent accused of a felony, but this right has never been completely applied to misdemeanor or civil cases. According to a 1974 American Bar Association (ABA) study, only 140 of 300 counties surveyed provided counsel in misdemeanor cases. Although at least half of the 300,000 persons per year charged with felonies cannot afford lawyers, most of the 3,100 counties in the United States still fail to provide adequate defense for the indigent.

Two thousand and nine hundred counties use the assigned counsel system by which the judge appoints a court-paid lawyer for the indigent defendant from a list of volunteers. Some investigators have found that uneducated defendants fail to understand their right to counsel at public expense, the advantages of having a lawyer, or even the meaning of the word "counsel." Often, legal aid is not available at critical points in the judicial process. In 32 counties, the court does not assign counsel until arraignment. Only 5 counties provide counsel at the preliminary hearing, where the case may be dismissed for lack of legally obtained evidence. In 75 of the 200 counties surveyed by the ABA, there was no provision for counsel at sentencing. Here, the argument of a good lawyer is often crucial in reducing the sentence or obtaining probation.

The necessity of counsel at the appellate level was decided in Douglas v. California,[24] which guaranteed the right of an indigent defendant to the assistance of counsel in the preparation of the first appeal. In Douglas, the court did not reach the question of right to counsel in discretionary or secondary appeals. But in 1974 the Burger Court denied indigents the right to court-appointed counsel in the pursuit of discretionary review; it further limited an indigent's exercise of his or her right to counsel by permitting the state, as a condition of probation, to impose the payment of state-incurred costs for appointed counsel.

The quality of service provided by the assigned counsel system is usually not as high as that of retained counsel. One authority stated: "The assignment scheme often fails to provide experienced, dedicated and zealous counsel. It certainly does not provide the investigations and other facilities needed for a full defense." Many lawyers assigned to indigents are young, often right out of law school, and usually have no experience in criminal cases. The low fees for this type of practice make it tempting for a court-appointed lawyer to have his client plead guilty to save the time and work necessary for a long trial. Funds are rarely provided for investigation expenses or for calling expert witnesses. Only nine states and the District of Columbia reimburse appointed counsel for out-of-pocket expenses. These are some of the reasons the court-appointed system of representation for minority defendants continues to be attacked. One critic summarized the situation as follows.

> They [court appointed attorneys] are out there like vultures, awaiting a "hand-out" from the court. They don't want to upset the system . . . if they give the judge too much trouble, they won't get appointed again. If this lawyer raises too much cain about demanding certain rights, then they are going to "overlook" those particular lawyers and start giving [court appointments] to those guys that go along with the system . . . . Young attorneys who don't care, or don't know better . . . or they are primarily there to get a little experience are not going to get the experience if they just plead guilty.[25]

The alternative Public Defender System used in some jurisdictions has certain advantages over the assigned counsel system. A public defender has a more complete staff at his disposal than the individual practitioner, as well as files of previous cases. One study reported that only 3 percent of the jurisdictions in the country had defender systems. By 1973 there were 650 organized defender systems serving 64 percent of the population. This phenomenal growth has been due to a number of factors, not the least of which was the Warren Court's concern for the right of defendants to the assistance of counsel. The 1963 decision in Gideon v. Wainwright,[27] requiring publicly funded counsel for all accused felons, and the 1972 Argersinger decision, extending Gideon to all cases in which imprisonment may be a punishment, vastly increased the number of defendants eligible for counsel.

If the indigency rates for criminal defendants are applied to FBI crime statistics, 65 percent of all felony defendants and 47 percent of all misdemeanor defendants are eligible for counsel provided at public expense. In absolute numbers, there are approximately 3.4 million adult criminals each year who potentially require public representation.

A recent National Legal Aid and Defender Association (NLADA) study conservatively estimated the total annual amount spent on defender services at $150 million. Increasingly, the federal government, states and counties have organized defender systems to make the most efficient use of available funds.

The public defender does not face the same dilemma as a court-appointed lawyer, who, if forced to choose between spending time on a private client or an indigent, will probably choose the former. But even so, the public defender system suffers from severe problems. The fact that the public defender must deal with the same prosecutors and judges daily may cause him to fight less in one case to get a better deal for another client later, especially if he knows a certain judge to be irritated by requests for jury trials, which are lengthy and expensive.

Lack of sufficient manpower and funds often limit the effectiveness of the public defender. A study of the San Francisco public defender's office in 1972 reported that the shortage of staff and funds severely limited the time given to interviewing the client and conducting an investigation, as well as usually preventing jury trials and appeals.

Criticisms of the public defender attorneys by minority defendants also include accusations that they are white, middle-class professionals who have more in common with prosecutors and other court professionals, with whom they share common cultural attitudes and value sytems, than with the majority of their clients, who are minority, uneducated, poor and from social and economic classes alien to defense counsel. They accuse appointed defense counsels of demeaning their clients by encouraging guilty pleas as a convenience to both the prosecution and the defense.

Some legal aid organizations, both private and government-financed, are making admirable efforts in defending the poor and minorities. But they simply do not reach enough people. As of January 1977, 40 states had fewer than five legal aid offices, and 7 states had no committees on legal aid or public defense on the state bar.

Probation and parole are also weighted against minorities. The adverse effect of pretrial detention on chances for obtaining probation has already been mentioned. In addition, the ABA study found that 46 out of the 300 counties surveyed required payment of counsel fees as a condition of probation. Many defendants are sent to prison because they cannot pay fines. California law allows civil commitment for those unable to pay fines of $500 or more. As for parole, four states require payment of a $3,000 bond by out-of-state parolees. Prisoners given parole are not provided with transportation home. Since unskilled industries generally deny jobs to ex-convicts, poorer prisoners have great difficulty obtaining employment, which is often required as a condition of parole.

In domestic and juvenile cases (in which minorities are often involved), where nearly all defendants appear without counsel, the uneducated person who has difficulty expressing himself or herself is a poor match for police officers and social workers. Particularly in juvenile cases, where vague laws give the judge wide discretion in detaining a defendant before trial and disposing of him afterward, black, Hispanic, Asian and Indian poor are all at a disadvantage. Middle- and upper-class delinquents, if they appear in court at all, are more likely to avoid institutionalization through their parents' promises of better supervision, payment of damages, private school training or psychiatric care. Since minority children are often denied admission to private care facilities, they usually must be committed to state training schools.

2. Minority Lawyers and Judges in the Legal System. In the late sixties and early seventies, the few minority lawyers then admitted to practice law began to organize to confront racism in society and most particularly within the legal system. Minority lawyers and law students, however, were no less vulnerable to racially biased practices than their clients in the criminal court system. Minority law students either were dismissed from law schools for academic failure, with suspicious frequency, or failed state bar examinations in suspiciously disproportionate numbers. The shortage of minority lawyers continues despite increased enrollment. The lack of representation of minorities on the bench is even more serious.

Historically, federal judgeships have gone to politically well-connected friends and allies of senators and presidents. Minorities and women who lack political power have been effectively excluded from selection for the federal bench, with rare and token exceptions.

A ten-month study by the Atlanta-based Southern Regional Council, released in October 1978, found that, in the eleven states of the Confederacy where blacks make up 20 percent of the population, district and circuit courts have perpetuated "shadows of segregation" at all levels of employment. The report stated that southern federal courts have black employment of only 6 percent.

At the time of the report, there was only one black federal district judge in the South out of a total of 112. Not one of the twenty-six circuit judges was black. There were no black full-time magistrates or U.S. district or circuit court clerks, and only one black U.S. attorney and three black U.S. marshals. Two southern federal district courts (Fort Smith, Ark., and Roanoke, Va.) had no black personnel, while nine of the region's twenty-nine district courts had no blacks in professional positions.

The Southern Regional Council, which strives to promote equal opportunity for blacks and whites in the South, called on President Carter to appoint qualified blacks and women to "a large number" of the 60 judgeships created in the South by the Omnibus Judgeship Act.

The involvement of establishment institutions, such as the American Bar Association (which has been rating potential nominees to the federal bench for presidents since Eisenhower) and the Senate Judiciary Committee, in selection processes that are generally covert and unobserved by the public has resulted in a federal judiciary that is overwhelmingly white, male, upper-middle-class, and Protestant, including numerous former prosecutors and big-firm corporate lawyers. The use of appointments to the federal bench as political patronage has not strengthened minority respect for the impartiality and equity of the federal bench.

Upon signing the Judgeship Act, President Carter promised to "encourage" the creation of nominating commissions for selection of district court judges and to appoint more than a token number of minorities and women to the federal bench. As of October 1979, there were only twenty-nine black and Hispanic federal judges and nine women. Almost half of these appointments were made in the previous two years. Those nominating commissions that were organized have been eliminated under the Reagan presidency.

As a candidate, Carter pledged that he would appoint federal judges "strictly on the basis of merit, without any consideration of political aspect or influence." In December 1976, however, the president-elect and Senate Judiciary Committee chairman Eastland reached an agreement that the administration would not challenge senatorial patronage prerogatives for selection of district court judges and U.S. attorneys in exchange for the establishment of presidentially appointed panels to select circuit court judges.

In February 1977, President Carter issued an executive order creating citizen's panels in each judicial circuit to screen and recommend candidates for circuit court appointments. Those panels were supposed to insulate the selection process from patronage politics, but results demonstrate that that was hardly the case.

The standards and guidelines for selection promulgated within the Omnibus Judgeship Act are broad and vague enough to leave much in the hands of senators. "Public notice" must be given so that those wanting to be considered for appointment can apply, but how such notice must be given is left unclear. The standards and guidelines state that an "affirmative effort" must be made to identify qualified women and minorities, but what constitutes an affirmative effort has not been defined.

The legislative history of the Judgeship Act shows that the Senate resisted an effort by the House to include a provision in the act that would have required the president to issue specific procedures for senators to follow in merit selection so that merit selection would not be arbitrary. The Senate also opposed a House move to add an affirmative action clause that would have required the president to "give due consideration to qualified women, blacks, Hispanics and other minority individuals." The final version of the Judgeship Act contains a weak nondiscrimination clause that suggests that the president "give due consideration to qualified individuals regardless of race, color, sex, religion or national origin."[27]

Although President Reagan appointed the first female member in the Supreme Court's history, the new president essentially dismissed the citizens' judicial panels previously utilized during the Carter administration. Since assuming the presidency, Reagan has appointed 55 federal judges, and of these, only one was a minority and only one judge appointed was female.

Minorities are not significantly represented in the federal judiciary. Among 120 Appeals Court judges, 111 are male, 109 are white, eight are black, two are Hispanic, and one is an Asian-American. American Indians are not represented. Stated differently, minorities represent less than 10 percent of federal appeal court judges, although minorities are 20.3 percent of the national population. In the federal district courts, minorities as judges fare slightly better, and minorities are also underrepresented as federal magistrates. The distribution of minorities on the federal judiciary is given in Table VI-2.

Clerks in the federal appeals courts total 1,459 and include positions such as law clerks, staff attorneys and public defenders. Whites hold 1,205 of these positions, while there are 134 blacks, 85 are Hispanic, 34 are Asian-American, and only 1 is American Indian. Among professional administrative personnel on the federal courts of appeals, of 173 in total, whites hold 153 positions, Hispanics 11, blacks 7 and Asian-Americans 2. Data for the Eighth Circuit Court of Appeals are not included in these statistics.

Table VI-2

Distribution of Minorities in the Federal Judiciary

Position	White Female	White Male	Black	Hispanic	Asian-American	American Indian
Federal Appeals Court (judges)	2	109	8	2	1	0
Federal District Court (judges)	26	413	38	16	5	1
Federal Magistrates (full time)	4	184	7	4	1	0
Federal Magistrates (part time)	0	232	0	1	3	0

Source: 1981 Annual Equal Employment Opportunity Report, Administrative Office, U.S. Courts

Minorities are also underrepresented in state judiciary appointments. Further, in half the states, judges are selected through the political process. Despite the seeming differences among states in their methods of selection of judges, the result of the process is the same: white males from upper-middle-class families, the majority of whom held at least one nonjudicial political office prior to ascending to the bench.

In some communities with a significant minority population, minority judges do sit in municipal and state courts. In a letter to Professor Derrick A. Bell, Jr., noted in his California Law Journal article "Racism in American Courts: Cause for Black Disruption or Despair," Judge George W. Crockett, Jr., is reported as saying:

> (He) believes even though 6 of 16 judges on the court are now black, conditions have not improved substantially. One problem is the need to import district court judges from the suburbs to help with the large caseload in the court's misdemeanor division. These judges unconsciously bring with them

> the racial views of the areas in which they regularly serve, which (Judge Crockett feels) are "decidedly inhospitable" to blacks. One result of this hostility is that 39 percent of the recommendations by the court's new Release On Own Recognizance program were followed by the magistrates, thereby causing overcrowding of jail facilities and considerable animosity in the black community.[28]

The judge noted a few improvements, however, since the increase in black judges. Court personnel and police are displaying more civility, including use of courtesy titles for blacks and poor whites in court proceedings. There has been a noticeable increase in black employees in all court departments. And black attorneys are being assigned to more indigency cases.

Judge Crockett reports some concern that the increase in black judges who are elected on a city-wide basis in Detroit, which is 50 percent black, is a factor in the legislature's failure to create six more badly needed judgeships. In addition, he reports that in recent years there has been growing agitation to "improve" the Wayne County judicial system by abolishing the City Recorder's Court and shifting its caseload to the County Circuit Court, thereby requiring black judges to run on a county-wide basis (only 23 percent black) with greatly reduced chances for election. Finally, black lawyers in the state fear that growing support in bar circles to make all judgeships in Michigan appointive rather than elective is an effort to curtail the present trend toward a racially integrated judiciary.

If blacks are sparsely represented in the state courts, Hispanics of Puerto Rican origin are even more rare. In New York City, where almost 30 percent of the criminal court calendar deals with cases of Hispanic defendants and/or victims, less than 1 percent of the judges are Hispanic.

In predominantly Hispanic areas such as San Antonio, Texas, where in 1968 there was only one criminal district judge and where in 1979 three of the six criminal district judges were Hispanic, some measure of progress is reflected. One Hispanic jurist with more than a dozen years' experience on the bench, in observing the situation for Hispanics in San Antonio, noted in testimony before the Council:

> There has definitely been an improvement in the judiciary and the legal profession . . . there has been an increase in Mexican-American lawyers (both male and female), in Mexican-American prosecutors . . . . The percentage of Hispanics on grand juries is now 45 to 50, 10 for blacks; therefore, we are

> inclined to see equitable representation on grand juries in Bexar County . . . . Anglo judges have had to become sensitized to the needs of Mexican-Americans; they have to seek re-election and they seek Mexican- American votes; . . . there is no discrimination in the bail bond system in Bexar County; here, the judges that set bail are Mexican-American . . . .[29]

While the foregoing observations are promising; they tend to be the exception rather than the rule, as Hispanics comprise approximately 52 percent of the population of Bexar County, which in itself is unique.

The Honorable John Carro, one of the three Puerto Rican judges of the New York State Supreme Court, in an interview with the Council in 1979, observed that the minority community's conception of the criminal justice system is that of being caught up as a defendant in an alien and hostile system. Judge Carro, who was recently appointed to the Supreme Court Appellate Division, New York State, described his perspective of the political realities of Hispanics in the criminal justice system:

> As you know, I'm one of three Puerto Rican judges in the Supreme Court of the State of New York. As a matter of fact, there are only about ten judges in the entire system, and we constitute almost two million people in this city. Governor Brown of California who has just been in office as long as Governor Carey, has in his first term of office, his first four years--he was just reelected--appointed Chicanos to the bench. Governor Carey has yet to appoint one and he's in his second term.[30]

A view shared by many minority observers of the state courts, including minority judges, is that the election or appointment of minority men and women to the bench will result in their using, in Judge Crockett's words, the "awesome power of the state which inheres in the trial judge to correct many of the racist and discriminatory class practices of our judicial system." As Judge Crockett explained:

> A black New York judge has ruled that a black mother is not an unfit custodian of her child merely because she elects to live in unconfirmed wedlock; a black Detroit judge has held a high-ranking city official in contempt of court for his willful destruction of public records showing building code violations in ghetto housing; several black Chicago judges have released nonwhite victims of police

> brutality; and a black Baltimore judge has given leadership in defeating a referendum proposal that was calculated to seriously impair the further integration of Maryland's judiciary. These and many other nonconformist rulings and actions by black judges confirm what Justice Cardoza wrote several years ago that we judges are the products of our experiences and our environment. These actions also demonstrate that we black judges have not forgotten from whence we came to our present exalted positions, nor the true impact of the oath we have taken to administer the law equally and without fear or favor.
>
> One sure remedy for the everyday racist and discriminatory class occurrences in our courts is to have more trial court judges who are black and/or nonconformists and who are not afraid to use the authority of their office to end such practices.
>
> A black judge--if he is psychologically black and not just physically dark of color; if he has been thrust forward by the convolutions of his black society and is not ashamed of the route by which he arrived; if he is still a man (or woman) of the people and not blinded by the prestige, power and affluence accorded his position--this kind of black judge will recognize racism and classism when he sees it; he will identify with the victims and be mindful that there, but for the grace of God, stand I; and he will proceed to invent legally approved ways and means of balancing the scales. This really is not difficult to do. Our white fellow judges have created so many exceptions to serve their purposes that we can always find an exception to support our judgment.
>
> Whether the black judge will have the courage in a particular case to use his tremendous judicial power and authority to remedy the situation, will depend upon the individual judge, his background and the support he has in the community he serves. His very presence on the bench and at judges' meetings, however, is likely to make his fellow judges more conscious of their own constitutional responsibilities.[31]

Increasing the number of minorities in the criminal courts, as counsel and judges, can help limit overt racism in the courts. And in view of the number of minority defendants who use court-appointed or public defender lawyers, their training and conditions of service become critical to the nationwide representation of the minority defendant.

a. Sentencing. Glaring disparities in the sentencing of poor and minority defendants as compared to those convicted of crimes who are affluent and white lack a principled basis, which undermines the integrity of the entire criminal justice process, implicate the court in racial and economic discrimination, and are a major cause of prison unrest and community disrespect of the legal process.

Differences in sentencing have been analyzed in the New York Times as reflecting differences in the defendants' race, wealth, age and sex, differences in the geographical location of the courts, differences in plea bargains, and perhaps most significantly, differences in the perceptions and ideology of the sentencing judge.[32]

Various remedies have been suggested to deal with what Marvin Frankel in his book Criminal Sentences summarized as chaos. "A defendant who comes up for sentencing has no way of knowing or reliably predicting whether he will walk out of the courtroom on probation or be locked up for a term of years that may consume the rest of his life, or something in between."[33] A former credit manager of a department store, convicted of a fraud and kickback scheme which netted him $16,800, was sentenced to 30 weekends in jail. An investment counselor who swindled more than $2 million from his clients was sentenced to one year and one day in prison. The compassionate judicial treatment of the Watergate defendants is too well-known to enumerate. A Dallas policeman convicted in 1973 of murdering a 12-year old Mexican-American named Santos Rodriguez was sentenced to five years in prison. George Jackson of Solidad Prison fame received, by his indeterminate sentence, what turned out to be a life term for stealing less that $75.00 worth of property.

Professor Thorsten Sellin argues that judges are like any other individuals who reflect their race and economic backgrounds. The convicted who stand before them are not merely offenders who must be dealt with according to law, but persons who represent a class in society toward whom judges will have attitudes. It would be denying them the "ordinary attributes of humanity" if "we were to assume that they could render justice free from all preconceptions."[34] Former Supreme Court Justice Wiliam O. Douglas once remarked, "Ninety percent of any decision is emotion." Further, Douglas claimed, "The rational part of us supplies the reason for supporting our predilections."[35]

Discrimination in sentencing has caused much debate among criminal justice researchers. Some offer evidence of racial discrimination; others make an argument that there is really no discrimination; and a few suggest justifiable reasons for the discrimination that exists. For example, Professor Edward Green studied the differential in sentencing between blacks and whites using 118 robbery cases and 291 burglary cases in the Philadelphia, Pennsylvania, criminal courts.[36] His hypothesis was as follows:

> Patterns of criminal behavior constituting a given offense differ intrinsically not only between the races but within each race according to the race of the victim and that such differences are legally sufficient to account for the apparent racial differential in sentencing.

Cases were placed into categories of black offender with a white victim; black offender with a black victim; white offender with a black victim; and white offender with a white victim.

Green's data show that the black offender with a white victim and the white offender with a white victim were sentenced more severely than the black offender with a black victim. However, Green concludes that the difference (3.2 months) in the robbery cases "is of no significance." The justification he gives for the insignificance of the differential is that white offenders with white victims have "slightly less serious prior records" than the black offender with white victims.[37] Crimes involving white victims and black offenders are of a "more aggravated nature, indicating a deeper internalization of the value of violence." Thus, Green concludes that there is no actual difference in the sentencing of blacks and whites; that variations that do exist can be explained as a "function of intrinsic differences between the races in patterns of criminal behavior."[38]

In another study, Morris Forsland found a difference in arrests between blacks and whites, as well as convictions and sentences.[39] His study involved 4,319 offenses resulting in 3,724 arrests, out of which there were 2,719 convictions and 1,547 prison sentences. The data reveal that blacks were arrested 5.8 times more than whites and were sentenced to prison 9.8 times more than whites.[40] Forsland believes that the difference between blacks and whites in arrest and convictions is due to "decades of discrimination" and the concentration of blacks in the "lower social/economic strata of American society."[41]

J. Oliver Williams and Richard Richardson analyzed 5,722 criminal misdemeanor cases in a cross section of lower trial courts in North Carolina.[42] Their concern was with:

> . . . the amount of disparities today, differences in policy impact by types of criminal offenses and at the varying stages of the legal justice process

> in southern trial courts, and the impact of environmental factors on criminal justice politics.[43]

Data were coded in accordance with three "societal offenses." These were property offenses, major traffic offenses and minor traffic charges, and three "nonsocietal" offenses, which were simple and aggravated assaults, public drunkenness and nonsupport. The hypothesis is that:

> Blacks brought into court on one of these offenses may face more severe treatment, regardless of the race of the victim, than would a black arraigned on a crime with less interracial consequences.

Williams and Richardson found that more blacks than whites plead "not guilty." However, blacks received more convictions and more active (rather than suspended) jail sentences. Whites receive more fines than blacks. Blacks were less likely to have charges reduced in societal offenses, and more likely to have charges reduced in nonsocietal offenses. The greatest difference was found in acquittals of blacks in contrast to whites. Overall, blacks receive fewer suspended sentences and more jail time for major traffic and property offenses than whites for similar offenses. The authors conclude that:

> Throughout the judicial process, elites formulate and apply policies which result in varying degrees of harshness on the average black . . . . The inability of white judges, solicitors and law enforcement personnel operating in the legal justice system to empathize with blacks may not stem from prejudice, but an inability of both races to understand the motives, the mores and the behavior of the other.[44]

In another case study involving sentencing disparities, Dean Jaros and Robert Mendelsohn analyzed the "judicial rule and sentencing behavior" in Detroit Traffic Court.[45] The authors began by outlining certain role expectations and norms that judges acquire through professional organizations. They then proceeded to describe the "disrespectful defendant behavior" in accordance with judicial expectations. This behavior is characterized as follows:

(1) Failure to use an honorific title in addressing the judge;

(2) Expression of disagreement with declarative statements of the judge;

(3) Raising the voice;

(4) Use of sarcasm;

(5) Expression of disparagement of courts, law or police; and

(6) Failure to express repentance.[46]

Courtroom observations were staged for two one-week periods, and each case was coded according to the authors' criteria, which also included the defendant's dress. "Coat and tie or hose and heels" were considered the most appropriate dress. Among the findings in the Jaros and Mendelsohn study is that racial discrimination which exists can be justified by the fact that blacks commit more "serious" offenses. Judges of course take severity of offense into account when passing sentence, and thus despite the fact that they may be playing a purely legal-professional role, judges, according to gross data, assign stiffer penalties to blacks.[47] They contend that what little difference exists in traffic court between blacks and whites (fines of $.12 to $12.29) is "insignificant." It was also noted that jail sentences "decline monotonically" as the dress becomes more appropriate, this being from everyday work clothes (garbage collectors, etc.) to coat and tie. Their conclusion is that sentencing behavior can be explained by the "legal-professional role" of the judge.

In an investigation of several studies concerning differential sentencing between blacks and whites, Michael Hindelang concludes that the difference in the studies is with type of data used and the geography. Studies finding discrimination used data based on homicides and murders.[48] Those finding equal treatment were based on traffic and property crimes. Furthermore, those using data gathered in southern states generally found discrimination, while those finding no discrimination used data from northern cities.

Even those studies finding equal treatment did show a differential. However, the authors generally stated that the difference was "insignificant." Also, most studies were based on one particular city. For example, the Philadelphia study by Green did note a sentencing differential of 3.2 months between the races. The Jaros and Mendelsohn study noted approximately .12 differential in fines between the races. However, their study, like that of Green's, was in only one city. The Bullock study, on the other hand, covered several counties. And the Williams and Richardson study involved twenty counties. In general, researchers obtain results which seem to support their threshold theses on sentencing differentials based on race.

Various recommendations have been made for dealing with sentencing differences. The now defunct revision of the Federal Criminal Code would have mandated a federal sentencing commission that would write sentencing guidelines for various felonies and misdemeanors with penalties as nearly fixed as possible. The maximum term for the conviction of any crime could not exceed the minimum by more than 25 percent, and judges would be expected to follow the measures or justify their departures in writing. If a defendant was sentenced to a term above the guidelines, he could appeal; if he was sentenced to one below, the prosecution could appeal. Parole eligibility would be eliminated unless requested by the judge.

The New York State 1973 mandatory sentencing drug law--the so-called Rockefeller law--reduced neither drug use nor drug-related crime according to a federal study. The law did increase the number of arrests in the state although some feel it contributed to the problem rather than solutions to the problem.

Other recommendations to eliminate sentencing disparity include requiring a judge to give written specific reasons in each specific case for why he selected the length of a prison term or terms of probation or the place of incarceration. The judge then must "document the facts which influenced him rather than the prejudices."

As has been demonstrated, at every stage of the proceedings within the adjudicative process, discretion adversely affects poor and minority defendants. It can be anticipated that whatever the mode of sentencing devised, discretion will still exact its inequitable toll from the poor and nonwhite. An analysis of the imposition of the dealth penalty as a sentence is a singularly instructive example.

b. The Death Penalty. In decisions on July 2 and 6, 1976, the U.S. Supreme Court upheld the constitutionality of capital punishment under the laws of the three states: Florida, Georgia and Texas. As of 1980, nearly 725 men and women had been sentenced to die in states which satisfy the court's holdings in Gregg v. Georgia,[49] Jurek v. Texas and Proffitt v. Florida. Florida leads all states in capital punishment with 153 people on death row, Texas has 139 and Georgia 80. Combined, they represent 52 percent of the inmates under the death sentence.

The court invalidated mandatory death penalty statutes and upheld the "guided discretion" statutes. That is, to be constitutional, a death sentencing statute must provide an enumeration of at least some guidelines to structure the sentencing decision to assist the jury on whether life imprisonment or death is appropriate according to a suggested list of "aggravating and mitigating circumstances." This decision is reached by a second trial after a defendant is found guilty.

There seems to be no more obvious rationale to those sentenced by this new method than before. One woman on death row in Georgia for a murder that her husband committed was convicted as a co-conspirator. In another Georgia case, two men recently received life imprisonment for a clearly proven contract killing.

The racial implications of the death penalty have taken a seeming turn since 1972 when the Supreme Court in Furman v. Georgia[50] declared the death penalty unconstitutional for, among other reasons, discriminating against the poor and members of minority groups. At the time of the Furman decision, a clear majority of the 600 persons on death row were minority persons, as had been those executed legally since 1930, when statistics began to be maintained. For example, 90 percent of all men executed for rape since 1930 have been black.

Today, 54 percent of those on death row are white, 41 percent black, 5 percent other minorities. (Rape is no longer a capital offense under the ruling in a companion case to Gregg, Coker v. Georgia, 96 St. Ct. 2861 [1977].) The South still remains the area in which the death penalty is popular. Seventy-six percent of those on death row are in the 11 southern states.

Sociologists William Bowers and Glenn Pierce undertook a detailed study of homicides in Florida over the five-year period between 1973 and 1977. They correlated the race of the victim with the race of the offender and developed the data givken in Table VI-3.

Table VI-3

Race and Sentencing in Florida Homicides, 1973-77

Victim/Offender Race	Estimated Number of Offenders	Persons Sentenced to Death	Probability of Death Penalty
Black kills White	286	48	.168
White kills White	2,146	72	.034
Black kills Black	2,320	11	.005
White kills Black	111	0	.000

Their research shows that the 72 white men on Florida's death row at the beginning of 1978 had all killed other whites. Not one of the 111 whites who killed blacks received a death sentence. It also shows that 92 percent of the men on death row--white or black--had killed whites, although, in fact, an almost identical number of murders of blacks had occurred (2,432 offenders arrested for killing whites versus 2,431 offenders arrested for killing blacks). The taking of a black life, even by another black, was one-tenth as likely to be punished by death as the taking of a white one. And yet, a black who took a white life was five times as likely to receive the death penalty as a white commiting the same offense.

Race of the victim is but one example of the continued racist and arbitrary criteria of the death sentence. There are other obvious problems, such as the capacity for people who are not poor to retain skilled attorneys who can plea bargain for a lesser charge or can "win" a life sentence even when their clients are convicted of first degree murder.

Certainly the inherent arbitrariness sanctioned by law as prosecutorial discretion will continue to be applied in what homicide charge to bring for a given set of facts: first or second degree murder, manslaughter, or justifiable homicide in self defense. The prosecutor will decide.

C. Conclusion

All of the issues discussed, whether overt racism in prosecution and sentencing or unconscious and indirect racism acting through cultural and economic channels, contribute to the loss of confidence in the courts and judicial system expressed repeatedly by minority people at Council hearings. Increasingly, at every stage in the law enforcement process, from arrest through trial and sentencing, a greater proportion of the defendants and, as will be seen in the next chapter, prisoners, are minorities. Such a situation is an inevitable consequence of a system permeated with institutional and attitudinal racism. The role of the courts in perpetuating this abuse can no longer be ignored.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Judge Bruce Wright, November 1978.

2. The President's Crime Commission, Task Force Report: The Courts (Washington, D.C.: Government Printing Office, 1972), p. 50.

3. U.S. Commission on Civil Rights: *Report on Hearings in 1970* (Washington, D.C.: Government Printing Office, 1970).

4. Transcripts of the National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, San Antoino, Texas, March 1977.

5. Ibid.

6. Bureau of Justice Statistics, U.S. Department of Justice, *Sourcebook of Criminal Justice Statistics 1979*, (Washington, D.C.: Government Printing Office, 1980).

7. *Stack* v. *Boye*, 342 U.S. 1, 1951.

8. George W. Crockett, Jr., "Racism in the Courts" (Washington, D.C.: Howard Law School, 1972), p.296.

9. S. Silverstein, *Bail in the State Courts - A Field Study and Report*, Southern Minnesota Law Review, No. 621, 1965, pp. 647-52.

10. D. Freed and P. Wald, *Bail in the United States*, 1964, pp. 32-22.

11. *Alexander* v. *Louisiana*, 405 U.S. 625, 1972.

12. *Swain* v. *Alabama*, 380 U.S. 202, 1965.

13. Daniel Swett, "Cultural Bias in the American Legal System," *Law and Society Review*, Vol. 3, August 1969.

14. Cited by Swett in a footnote, *op.cit.*

15. *Willian* v. *Florida*, 399 U.S. 78, 1970.

16. National Advisory Commission on Criminal Justice Standards and Goals: Courts Task Force (Washington, D.C.: Government Printing Office, 1973) p. 320

17. *Apodaca* v. *Oregon*, 406 U.S. 404, 1972.

18. National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, *Sentencing Guidelines: Structuring Judicial Discretion* (Washington, D.C.: Government Printing Office, 1978).

19. *Bordenkircher* v. *Hayes*, 98 S. Ct. 663 (1978).

20. Ibid.

21. *Powell* v. *Alabama*, 287 U.S. 45 (1932).

22. Sheldon Krantz, et al., *Right to Counsel in Criminal Cases: The Mandate of Argersinger* v. *Hamlin* (Cambridge: Ballinger Pub. Co., 1976).

23. *Kirby* v. *Illinois*, 407 U.S. 25, (1972).

24. *Douglas* v. *California*, 406 U.S. 682 (1972).

25. Transcripts of the National Minority Advisory Council on Criminal Justice, New York, 1979.

26. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

27. See "Report Card on Judicial Merit Selection," *Congressional Quarterly*, Vol. 35, No. 5, 1979, pp. 189-194.

28. Letter to Derrick Bell from George W. Crockett, Jr., February 14, 1981.

29. *Op.cit.*, Transcripts of the National Minority Advisory Council on Criminal Justice, San Antonio, 1977.

30. Transcripts of the National Minority Advisory Council, Law Enforcement Assistance Administration, Judge John Carro, New York, 1979.

31. *Op.cit.*, George W. Crockett, Jr.

32. *New York Times*, "Process Due and Overdue," December 18, 1977.

33. Marvin L. Frankel, *Criminal Justice* (New York: Hill and Wang, 1973).

34. Thorsten Sellin, "Race Prejudice in the Administration of Justice," *American Journal of Sociology*, Vol. 41, Sept. 1935, p. 212.

35. *The Washington Post*, September 11, 1980, p. A-16.

36. E. Green, "Inter- and Intra-Racial Crime Relative to Sentencing," 55 *Journal of Criminal Law, Criminology and Police Science*, 348, 1964.

37. Ibid., p. 350.

38. Ibid., p. 356. The author comes to a similar conclusion in an earlier study. "Intensive analysis reveals that these variations in the gravity of the penalties are due to differences in criminal behavior patterns associated with these biosocial variables, not to hidden prejudice." E. Green, *Judical Attitudes in Sentencing* (New York: St. Martin's Press, 1961), p.63.

39. M. A. Forsland, "A Comparison of Negro and White Crime Rates," 61 *Journal of Criminal Law, Criminology and Policy Service*, 214, June 1970.

40. Ibid., pp. 215-216.

41. Ibid. p. 218.

42. J.O. Williams and K.J. Richardson, "The Import of Criminal Justice Policy on Blacks in Southern Trial Courts," a paper prepared for delivery at the Forty-third Annual Meeting of the Southern Political Science Association, November 12, 1971.

43. Ibid.

44. Ibid.

45. D. Jaros and R.I. Mendelsohn, "The Judicial Role and Sentencing Behavior," *Midwest Journal of Political Science*, Vol. 11, No. 4, November 1967, p. 471.

46. Ibid., p. 478.

47. Ibid., p. 484.

48. M. J. Hindeland, "Equality Under the Law," in C. Reason and J.L. Kuykendall, eds., *Race, Crime and Justice* (Pacific Palisades, Calif: Goodyear Pub., 1972), p. 312.

49. *Gregg* v. *Georgia*, 428 U.S. 153 (1976).

50. *Furman* v. *Georgia*, 408 U.S. 238 (1972).

CHAPTER VII

THE INEQUALITY OF JUSTICE: CORRECTIONS

> It is humiliating. It is degrading. It is inhumane. The system is designed to punish rather than rehabilitate . . . . So, anything else that comes, the punishment comes first; just in the structure of the housing, the architecture, you know. It is so overwhelming, how the hell are you going to breathe when you have got bars around you; when you don't know what the weather is because the windows are translucent? How the hell are you going to function . . .? All of the prison system needs to be cleaned up.[1]

A. Introduction

Having been apprehended, charged and processed by the police and having been adjudicated, convicted and sentenced by the courts, the minority offender passes into the hands of a system that is designed to punish the offender, prevent any future violations and/or prepare the offender for a productive reentry into society. In addition to this obvious dilemma concerning objectives, the problem confronting minorities brought to this stage of the criminal justice process is that the same forces which resulted in unfair and inequitable treatment by the courts and police also operate to frustrate the hope of restoration and rehabilitation.

In this chapter, the nature and function of those forces which cause the correctional system to work to the disadvantage of minority offenders are examined. The discussion focuses, first on incongruent relationships between minority culture and various aspects of the correctional system. This is followed by an examination of the attributes of those who control and those who are controlled by the nation's correctional system. This overview provides a background for the survey of the minority experience in corrections as noted by the duration of confinement, treatment, overt racism, minority inmate responses to racism, outcomes and alternatives to imprisonment.

Consistent with the overall thrust of this report, the concern in surveying the minority experience in corrections is with those aspects of their treatment that are unique and unfair, that are inconsistent with the goals of corrections, and that debase basic human rights. The correctional system is characterized by numerous shortcomings that are inflicted on minority and nonminority alike. Rectification of these problems will benefit both minority and nonminority inmates and, indirectly, the larger society. In the interest of an efficient and focused presentation, this discussion is confined to (a) problems unique to minorities and (b) a minority perspective of more widely experienced problems.

Implicit throughout this chapter is the assumption that a multifaceted set of causes underlies the problems experienced by minorities in the correctional system. While it is not the intent to explore these underlying forces in this descriptive statement of the nature of the problem, it is essential that these be more fully understood as planning for remediation progresses. For that matter, some might identify as the "problem" what, in fact, can be the underlying "cause." No matter what labels are used, it is evident that some of the negative experiences of minorities under correctional supervision are the result of blatantly negative individual attitudes. Other negative experiences are the result of inadvertent institutional practices established through insensitivity to minority needs. Still others are a reflection, in individuals and in institutions, of societal attitudes toward minorities. Frequently, these three forces operate simultaneously to yield unfavorable outcomes and experiences for minorities. Hence, the inequalities suffered by minorities in the correctional system will be fully resolved only when more fundamental social maladies are eliminated.

The focus on minorities includes a set of minority groups which experience limited ability to control the conditions of life for themselves--and certainly an inability to do so at the expense of others in the society. Without exception, this powerlessness is congruous with the correctional system and the larger social structure. Specifically, blacks, Hispanics, American Indians, and Asian-Americans (both men and women) are considered. Primary attention is on the first two groups because of their larger representation and the greater availability of information. Although in certain areas and institutions the other minority groups constitute a significant segment of the population under correctional supervision, the assumption is that the more general minority experience may be portrayed through illustrative materials from the experiences of blacks and Hispanics.

B. Minority Culture and Correctional Equity

It is hardly an overstatement to suggest that the totality of human experience is influenced by culture, whether that experience occurs in a correctional institution or in the free community. Human beings perceive and respond to external stimuli in culturally determined ways. As cultures differ, both perception and response will differ. Recent developments in the academic arena have reinforced this notion, making it clear that culture is a central element in determining achievement. Consequently, current enlightened thinking suggests that cultural predispositions must be taken into account in planning educational experiences for minority groups. To the extent that corrections, like education, is a process of socialization, it stands to benefit from parallel approaches.

While the complex matrix of relationships between minority culture and correctional experiences cannot be fully explicated in this brief analysis, it is important to emphasize their existence and to suggest that it is foolhardy for those who sustain the correctional system to ignore the impact of minority culture on correctional outcomes. The issue might be addressed from a more general perspective, taking note of minority group perceptions of the correctional system, or it might be considered from the more specific perspective, focusing on given cultural traits and beliefs which impact on correctional outcomes. In either case, there is ample justification for interest in the relationship between minority culture and correctional equity.

It is fair to assume that an individual's fundamental perception of the criminal/judicial system is largely culturally based. That is, the extent to which an individual sees the correctional system as legitimate, equitable, ominous, rehabilitative or however the system may be viewed will largely be a function of culture-linked experiences and attitudes. This culturally determined perception is certain to shape the experience and outcome of each individual who comes under the supervision of the correctional system.

There is no lack of evidence of cultural influence in attitudes toward the criminal/judicial system. German and Hoffman suggest that these attitudes develop early and intensify with age.[2] In their study of attitudes toward the legal system among youngsters in grades seven through eleven, these researchers found that cynicism increased among successively older groups and that, for each age level, black students were less supportive of the legal system than their white counterparts. Speaking expressly about the correctional system, O'Dell conveys the sentiment of many minority group members in the following statement:

> For Americans of African descent, the prison system in the U.S., throughout the history of our American experiences, has been part of the politics of state oppression and exploitation. Beginning with its role as the dungeon for holding runaway slaves . . . down to our own day in which the local jails have been places of confinement for tens of thousands of civil rights activists, the prisons of America have held a special meaning for us.[3]

The insensitivity of correctional systems to the culture of minorities is perhaps best illustrated by the experience of inmates who identify with the Black Muslims. At one time, rules and policies were instituted specifically to limit the expression of the Muslim religion, the justification being that security had to be maintained within the institution. An example of this cultural indifference is seen in regulations which led to solitary confinement for a Muslim who refused to shave his beard, but brought no disciplinary action against an Orthodox Jew for the same action.[4] In another instance, a Muslim inmate was charged with "agitating" and "inciting to riot" because he was speaking to a group of blacks and had in his possession "hate literature, which consisted of a book by Elijah Muhammed."[5]

Turner states that because the close unity among Muslims is perceived as a threat to prison authority, "Officials in most prisons, at one time or another, have banned the practice of Islam or imposed tight restrictions on Muslims but not on other religious denominations."[6] Although recent court rulings have given Black Muslims the right to religious expression, a diet consistent with their beliefs and materials of their faith, it is still possible for prison officials to make "reasonable" restrictions when it can be shown that the group abuses its rights or jeopardizes institutional security by specific behaviors.

Pursuing this line of inquiry from a slightly different perspective, Aswadu suggests that prison does not always have the intended meaning for the typical black inmate.[7] "The ghetto brother," he states, "by virtue of his pre-awareness, is, in a sense, ready for the place. He is not shook up when he finds himself behind the bars of some judge's prison."[8] If this is indeed the case, the intended goals of imprisonment are being frustrated, and this approach to rehabilitation is a waste of human and economic resources where a significant segment of the black inmate population is concerned.

Robert Johnson,[9] Robert Lee,[10] Joan Moore et al.[11] take a polar view of imprisonment where Hispanics are concerned. In separate studies, these researchers came to the conclusion that Hispanic inmates suffer unduly as a result of the conflict between their cultural backgrounds and the culture of the predominantly white correctional staff. First, their need to personalize impersonal environments leads to the formation of cliques and cultural friendship groups within the prison community--a practice which is likely to incur opposition and punishment from prison officials. An even more serious problem is the severe strain which Hispanics experience when their traditionally strong community and family ties are severed by imprisonment. When cut off from these normal social relationships, the individual often experiences intense depression--which accounts for the particularly high suicide rate among Hispanic inmates. This means that, all other things being equal, an inmate suffers inequitable hardships because his cultural and language background are not recognized by correctional personnel.

None of the groups considered here is so markedly abused by the correctional system because of its cultural characteristics as the American Indian. In part, this is due to the stark contrast between American Indian culture and that of the larger society. Thus, the greater the degree of identification with his native culture, the more likely the American Indian inmate will suffer abuse in the prison context. In some instances, this abuse may be covert and unintended. In many instances it is blatant and intentional. One finds such abuse in the denial to American Indians of the right or opportunity to practice their religions in correctional institutions, because such practices are considered weird or "savage." It extends beyond this to restrictions on wearing headbands, using native languages, maintaining long, braided hair, enjoying native music, or securing culture-related leisure and educational materials.

The constraints of this brief chapter will not permit full elaboration of the extent to which violation of cultural traditions by the correctional system creates an inequitable situation for minority inmates. The previously cited examples are illustrative. It should also be pointed out that little is known about the manner in which culture acts as a filter for correctional experiences. For example, it is not known how cultural attitudes toward freedom, authority, fate control or suffering affect correctional outcomes. What effect does additional deprivation have on a group already deprived of certain social amenities? How does a culturally determined sense of social rejection and alienation impact on correctional outcomes? These are issues that must be considered as the relationship between minority cultural and prison experiences is examined. Unfortunately, the American correctional system has been developed by the majority group that gives little consideration to the cultural characteristics and traditions of the minorities who are abused by that system.

C. Minority Views of Prison Practices

Prominent among the issues to be included in an examination of the manner in which structural or institutionalized aspects of the correctional system tend to work to the disadvantage of minorities is the physical location of correctional facilities. The fact that prisons are usually located in rural areas, at some distance from the urban centers that are home for the largest share of minority inmates, is a matter that has been repeatedly raised and attacked. It is evident that prison locations are the result of political or economic considerations rather than concern for the rehabilitative effect of the correctional system.

Barbara Arnwine, staff attorney for a North Carolina legal systems program, noted in her 1977 testimony before the National Minority Advisory Council that even federal institutions such as that at Butner, North Carolina, are isolated from population centers. The Congressional Select Committee on Crime, in its investigation of the Attica riot and other prison uprisings in America, pointed out that prisons located in isolated areas suffer from an inability to recruit adequate professional or minority staff and also tend to further isolate inmates from community and family--an unnecessary and dehumanizing outcome of imprisonment. Criminal Court Judge Bruce Wright made the following corroborating statement before the Council:

> Corrections systems warehouse people; otherwise there wouldn't be any necessity to have our fortresses . . . so far away from areas which supply them with most of their census. If we wish to not dehumanize people and to still have a prison system, we should perhaps have some nearer the urban areas from which the people come.[12]

No less distressing, from a minority perspective, is the regulations that govern inmate life in most correctional institutions. This can be illustrated by brief consideration of the Iowa State Penitentiary's Rule Book.[13] At the top of the list of regulations in this manual for inmates is the reminder, "Your first duty is strict obedience to all rules and regulations and all orders of the officer under whose charge you may be placed." While such regulations may be functional in terms of prison order, they have special negative meaning for minorities.

In effect, practices such as this place the fate of the inmate almost exclusively in the hands of the security officer for the duration of confinement. Given the fact (as is noted in greater detail below) that prison security staffs are predominately white, the inmate is immediately confronted, upon entering the prison walls, with a replication and perpetuation of the scheme of things that he experienced (and no doubt rejected) in the free community. The absolute authority with which prison security officers are vested gives the minority inmate a decided handicap in achieving positive outcomes.

One might also raise serious questions concerning the application of a rule that "matters of religious nature should be taken up with the Chaplin" in a setting where there are so few minority chaplins.[14] The meaning of a requirement that an inmate "perform the same amount of work as would be required from you as a citizen"[15] for inmates who (1) are unaccustomed to regular employment or decent wages and (2) receive no just compensation for compliance, must be examined. Indeed, Sutherland and Cressey report findings from a survey which "showed that six states do not pay wages to inmates and that the remaining states pay from two cents to three dollars per day; sixteen states pay less than sixty cents per day."[16]

The physical health of the inmate is jeopardized by a requirement stating, "If you are sick or unable to work, report the fact to your officer and act as he may direct."[17] This jeopardy is particularly true where typical attitudes toward minorities prevail. The same might be said with respect to the regulation that "all books and other reading matter, the personal property of inmates, must be sent to the Mail Censor for examination and . . . if approved, he will certify ownership,"[18] or another that states, "Inmates who have a clear record for two months from the date they are received will be given honor time."[19] One has only to take a cursory look at the list of potential inmate offenses to realize that prison operation is structured in such a manner as to leave the minority inmate especially vulnerable to abusive treatment. Some potential inmate offenses are bed not properly made, altering clothing, communication by signs, grimacing, hands in pockets, hair not combed, insolence, inattentiveness, laughing, loud talk, lateness, staring, wasting food, shirking, loitering, mischief, and neglect of study.[20]

D. Minority Control of Correctional Systems

It is perhaps the ultimate expression of racism in American society that minorities are represented in such disproportionately large numbers among the inmates of correctional institutions, but are found in such disproportionately small numbers among those who control those institutions. Glaring statistics illustrate this fact, whether the reference be made to blacks, Hispanics, American Indians or Asian-Americans. This fact is evident in federal, state and local correctional institutions and at all levels and positions within the correctional system. The clear truth about corrections in this nation is that the system is directed by whites toward minorities.

If one starts a search for minority participation in the administration of correctional systems at the very highest level of the hierarchy, one finds a virtual absence of minorities. A nationwide survey shows two black directors of corrections, one former Asian director of corrections and no Hispanic or American Indian director. Only as minorities gain a proportionate share of this top position will there be hope for resolving the plethora of problems that face the minority inmate.

If one turns to full-time wardens of state correctional institutions, one finds that data on 503 of the individuals holding such positions show that only 6 percent are black. Among the 614 assistant wardens for whom data are available, only 6 percent are black. Reflecting on this lack of minorities in upper-level correctional positions, Debro makes the following comment:

> The need for minority administrators is very acute, not because they can control but because they have a sensitivity white administrators can never acquire and which is necessary to deal more effectively with minority offenders. There is an urgent need to identify and train minorities so that they may eventually move into managerial positions within corrections.[21]

When Dr. Andrew Chishom, of the University of South Carolina, made an effort to obtain data on the employment of minorities in departments of corrections during 1975, he discovered that such figures were generally unavailable. In a subsequent effort to fill this information gap, he mailed questionnaires to all directors of corrections across the nation. Responses were far from satisfactory, in terms of both the number and completeness of forms returned. However, from those questionnaires that were returned, Chishom was able to gain some insight into approximate proportions of black inmates and black personnel in adult correctional systems across the nation. This cannot be viewed as a definitive statement on the state of affairs, but Table VII-1, based on this simplistic survey, provides some notion of the disparity in the numbers of black employees as compared to black inmates. (Reliable statistical data on other minorities are basically unavailable.)

Table VII-1

Percentage of Black Inmates and Black Prison Employees

Area	Inmates	Employees
Northeast	38.6	11.9
Southeast	59.0	20.8
Midwest	41.2	5.5
West	12.5	2.5

It is a fair estimate that the minority groups in view here constitute about 20 percent of the total U.S. population, about 50 percent of the prison population, but only about 10 percent of adult correctional personnel. The majority of minority correctional personnel are concentrated in the lower echelons of the occupational structure. The situation is much worse in some states than in others. For example, in New York whites constitute over 90 percent of adult correctional personnel, while in California the corresponding figure is closer to 80 percent. However, there is no state in which minority representation among correctional personnel approaches minority representation among the inmate population.

One also finds a measure of variation in the presence of minorities on correctional staffs, depending on the location and type of facility. Approximately one-third of a sample of 500 correctional institutions had no minority staff members. Among the road camps and forestry camps included in this sample, nearly two-thirds had no minority staff members. On the other hand, community-based correctional programs are (a) very likely to have minority staff members and (b) likely to have them in numbers more consistent with the proportion of minorities under supervision. The fact is that minorities are far more likely to be employed in full-time custodial positions when the facility is located in an urbanized area than if it is located in a small town or rural area.

Given that prison security personnel have such a great deal of control over the minority inmate's life on an hour-by-hour basis, and play such a major role in determining the inmate's chances for release from the institution, the lack of a minority presence among security personnel represents a serious inequity in the nation's correctional system--unless one expects white security personnel to have racial attitudes that are radically different from those expressed by whites in the larger society. A prison guard literally has the power of life or death over the inmate. In most instances, a guard's unsubstantiated testimony is sufficient to cause an inmate to be confined to the "hole" (solitary quarters without lights, bed, toilet facilities or adequate diet) for days or weeks. Indeed, it would be unusual for a court to convict a prison guard for any abuse of an inmate--even murder.

Although most of the previously mentioned statistics have reference to black correctional personnel, the principle may be transferred to the other groups under consideration in this report. Further, what is true for state correctional facilities can also be applied to federal and local institutions. Within federal prisons, only about 5 percent of all personnel are Hispanics. The New York State Department of Corrections includes a Hispanic staff of only about 3 percent--in spite of the overrepresentation especially of Puerto Ricans among the inmate population. This means that Hispanic inmates who are not fluent in English are likely to have great difficulty in communicating with corrections personnel. It is not unusual under such circumstances for a prison staff member to become frustrated and vindictive toward the inmate who has limited facility in English, considering the inmate to be illiterate or insolent. At best, these Hispanic inmates are ignored and not privy to whatever amenities are available in prison life.

The relative absence of minority staff extends beyond the security personnel of prisons. The lack of minority employees is particularly acute in the case of the professional staff. A list of minority professional staff members that are needed in the prisons would include librarians, nurses, physicians, psychologists, sociologists, social workers, vocational counselors, teachers (primary, secondary, and college level) and a full range of vocational technicians. In testimony before the National Minority Advisory Council, Michael Lindsey, psychologist for the North Carolina Department of Corrections, stated, "There are thirty-three psychologists employed by the North Carolina Corrections Department and only one of the thirty-three is a minority."[22] Schweber-Koren, in a review of statistics on federal correctional facilities, points out the following proportions of black inmates in the general prison population and black teachers (see Table VII-2), highlighting the dearth of professional educators among the staff of federal prisons.[23]

Table VII-2

Proportion of Black Inmates to Black Teachers

Area	Inmates	Teachers
Northeast	56%	12%
Southeast	41	17
North Central	37	7
South Central	24	14
West	19	15

A closely related issue is the absence of minorities on parole boards and on the staffs of probation and parole departments. Clearly, individuals in these positions have virtually the same amount and type of power over inmates' lives as do security personnel. Here again, a precise picture cannot be provided because of the lack of national data. However, testimony and reports obtained by the Council indicate that minority underrepresentation is no less acute in these areas. For example, the Federal Parole Commission has a single black and a single Hispanic among its nine members. There is but one Hispanic probation officer in San Francisco County. In Los Angeles County, which has the largest population of Mexican-American parolees in the nation, Hispanics constitute only 10 percent of the staff. At the upper levels of supervision and management, they represent less than 5 percent of the staff. The following testimony is illustrative.

> As a minority parole agent in East Los Angeles, I noticed that the majority of parolees were minorities, but most of the parole agents were non-minority. In an effort to improve the situation between Mexican-Americans and parole staff, Mexican-American staff were recruited, and six parole suboffices were created. This effort resulted in a lower parolee return rate to prison.[24]
>
> In talking about the perception of justice by minorities, it is important that we have Puerto Ricans in the criminal justice system. I know few Puerto Rican parole officers.[25]
>
> I am presently conducting an experimental project for county court services in Peoria, Illinois, because they were not able to deal with the black population. One of the many problems they found is that the target population is predominately black and the probation officers are not skilled and/or adept at dealing with blacks in a low income and high crime area.[26]

Despite the critical nature of this problem, affirmative action compliance continues to be abysmal in the correctional system; this may, in part, be due to the lack of knowledge or concern on the part of individuals in top administrative positions. Gilbert Pompa, director of Community Relations Services of the Department of Justice, in comments to the Mexican-American Correctional Association identified (a) the "old boy" syndrome and (b) recent successful challenges to affirmative action as major causes for the failure to increase the representation of minorities among correctional personnel. It was his recommendation that this be offset by appointments of minorities to administrative and managerial positions in the system.

Chishom has recommended that the American Correctional Association establish a national clearinghouse on affirmative action, developing model programs and providing technical assistance. Castro suggests that a talent pool be created within the Hispanic community to channel potential personnel into corrections and to improve the treatment of Hispanic inmates. Howard University's Institute for Urban Affairs and Research has suggested that professional associations (of social scientists, educators, etc.) aid in combatting the problem by creating subsections that focus on corrections and by encouraging special training at the graduate level for persons who have an interest in practicing their profession in correctional settings. One might also take note of the following comments with respect to participation of minority females in control of the correctional system:

> While black women are overrepresented among the numbers of incarcerated women, they are underrepresented in the correctional work force. One way to remedy the imbalance is to increase the number of black women in the correctional work force . . . . The changes needed can be effected as more black females are routed away from education and humanities majors and into curricula that can prepare them for careers in law. Black women can contribute as policewomen, . . . correctional officers, psychologists . . . probation officers . . . . More black female ex-offenders must be hired by government agencies, correctional institutions, and police departments.[27]

E. Statistical Profile of Minority Inmates

The fact has already been mentioned that minorities are a disproportionately large segment of the nation's imprisoned population. The task here is to further emphasize and document this fact and to offer some brief comment on the characteristics of the minority inmate population. In some measure, the task is a simple one. The U.S. Bureau of the Census reported some 328,000 persons under custody in correctional institutions.[28] Of these, 133,542 (40.6 percent) were black, and another 21,805 (6.8 percent) were persons of Hispanic origin. Although these figures are based on sample data and are probably an undercount, they are clear evidence of the issue raised. Moreover, this overrepresentation of minorities exists at the federal, state, and local levels. This is indicated in Table VII-3.

The 1974 advance report on the census of state correctional institutions indicates a total of 191,367 inmates in state prisons. Some 89,747 (46.9 percent) of these are reported as black. This would suggest growth in both number and proportion of black inmates. Although some of this growth may be an artifact of the earlier sampling undercount, it is fairly certain that at least a part indicates an upward spiral. For all groups, the prison population is apparently fluctuating upward, keeping the United States on a par with South Africa and the Soviet Union as having the highest per capita inmate populations in the world.

Table VII-3

Black and Hispanic Inmates of Correctional Institutions

Inmate	Type of Institution		
	Federal	State	Local
Number of Persons			
Blacks	6,071	74,671	52,800
Hispanics	1,758	11,838	8,209
Percentage of Total			
Blacks	28.8	42.0	40.9
Hispanics	8.3	6.7	6.4

While more conservative estimates indicate that blacks (40 percent), Hispanics (8 percent), American Indians (2 percent), and Asian-Americans (2 percent) constitute about half of the nation's prison population, a careful analysis of the prison scene suggests that this figure is more accurately set at two-thirds of the prison population. Specifically, the argument is that Hispanics are grossly undercounted because of the universal practice of enumerating them as "white." If accurate counts were available, it might be discovered that Hispanics represent as much as 20 to 25 percent of the inmate population. The concern here is no less justified, whatever may be the appropriate figure, since together these minority groups represent less than 20 percent of the nation's total population. Hence, minorities are found among prison inmates in numbers two and a half or three times as great as their representation in the free community.

The alarming aspect of this situation is that the greatest number of these minority inmates are not incarcerated for serious offenses such as murder, rape or aggravated assault. Such crimes account for about one-tenth of all federal and state prison inmates--and even less for those in local jails. The bulk of the inmate population is imprisoned for offenses such as burglary, larceny, robbery and other crimes against property. Jails and prisons are heavily populated with persons who have been charged, prosecuted, and/or convicted for offenses such as drunkenness, gambling, prostitution, or possession of narcotics. At least half of those who have been convicted were found guilty of so-called victimless crimes. Indeed, it has been estimated that more than 75,000 persons are being held in jails on any given day without having been convicted of any offense.

The concern about the size of the minority prison population and the seriousness of the offense committed by this group is increased by the fact that this imprisoned population is composed of people who commit crimes because they are poor and then are charged, prosecuted and convicted for the same reason. As evidence of this it might be noted that among those prison inmates for whom income data prior to incarceration are available, 90 percent had incomes of less than $5,000. For this same group, some 61 percent were laborers--as compared to only 5 percent of the total population. Only 6 percent of these inmates were engaged in professional occupations prior to imprisonment--as compared to 21 percent of the general population. It becomes clear then, that the prison population is (a) highly selective of minorities, and b) within these groups, it is highly selective of the disadvantaged.

The minority prison inmate population is also strikingly young, making imprisonment an even more tragic waste of the nation's human resources. Almost half of the blacks in jail are between the ages of 18 and 24. Minorities in state and federal prisons tend to be older; even so, more than one-third of the blacks in state prisons and more than one-fourth of those in federal prisons are in the 18 to 24 age group. Among Hispanic inmates, more than one-fourth of those in federal prisons, more than one-third of those in state prisons and nearly half of those in local jails are under age 25. Details of the age distribution of black and Hispanic inmates are provided in Table VII-4 as reported by the U.S. Bureau of the Census in its survey of persons under custody in 1970.[29]

Table VII-4

Age Distribution of Black and Hispanic Inmates

	Type of Institution		
Race and Age	Federal	State	Local
Black			
Under 18	0.5%	3.0%	5.1%
18-24	27.9	34.6	41.7
25-39	48.9	44.1	36.7
40 & Over	22.7	18.3	16.5
Hispanic			
Under 18	--	0.4	5.1
18-24	24.3	31.0	37.2
25-39	49.5	51.1	37.1
40 & Over	26.2	17.5	20.6

This discussion would be incomplete without reference to the female minority inmate population. The task here is an admittedly difficult one because of the scarcity of data. Hence, the first observation with respect to this group should be that it is neglected, in terms of both the resources and the attention directed toward it. This may be, in part, due to the fact that minority females represent only about 2 percent of the nation's prison population. Nonetheless, that is nearly 10,000 individuals. Moreover, the concern is justified by the fact that minorities constitute at least 45 percent of the incarcerated female population. Table VII-5, taken from Census Bureau reports, offers some insight into the dimensions of the problem.[30]

Table VII-5

Percentage of Black And Hispanic Female Inmates

Race	Federal	State	Local
Black Women	48.3%	47.7%	36.9%
Hispanic Women	12.1%	3.1%	4.4%

The seriousness of the problem is intensified by the fact that both the number and proportion of minority female inmates have increased in recent years. The number of minority females in federal prisons was up more than 25 percent over the past decade, and the number in state institutions increased by at least 15 percent. Corresponding increases for white females were only 2 and 12 percent respectively. Further, in certain states, minority females are an even greater segment of the prison population.

The paucity of data allows very little to be said about the characteristics of minority females in prison. It appears that they, like their male counterparts, come from relatively deprived backgrounds, i.e., low income, limited education and low status occupations. More than half have minor children at home--an issue that is raised again in the discussion of inmate families. Most were employed immediately prior to incarceration, and over 9 percent have held regular employment at some point in their lives. However, it is estimated that two-thirds earned less than $3,000 per year, and almost 90 percent earned less than $5,000 per year immediately before imprisonment. Minority female prisoners, like minority male prisoners, are most often convicted of property-related offenses. The next most frequent offenses are drug-related crimes, which may also be economically motivated. Perhaps the most striking feature about minority women in prison is their youth. Census data show that the proportion of black female prisoners under age 30 is 62.4 percent, 55.1 percent, and 68.8 percent for federal, state, and local institutions. Corresponding figures for Hispanic women are 45.2 percent, 63.7 percent, and 54.6 percent.[31]

F. Duration of Confinement for Minority Inmates

The inequity of minority imprisonment is not only one of greater numbers, but also one of greater duration of confinement once imprisoned. It has become increasingly evident that, proportionally, minorities convicted of crimes are at greater risk of being (a) sentenced to a term of imprisonment, (b) sentenced to a longer term of imprisonment than members of the majority race, and (c) forced to serve a longer portion of any given term of imprisonment. This issue has been raised and further documented in the chapters on the police and courts of this report.

At present, there is no national compendium of systematically gathered data on sentencing or on duration of time served by inmates of different racial groups. However, the Council received repeated testimony that there are discrepancies across groups and that these differences are to the disadvantage of minorities. One such testimony identified a Hispanic male who was sentenced to 1,800 years in prison for selling heroine valued at ten dollars. Another pointed out situations in which American Indians were sentenced to two years' imprisonment for "habitual drunkenness." A third cited the case of six black chronic alcoholics who had served a collective total of 125 years in penal institutions for liquor-related offenses.

In a study of sentencing practices of Texas courts, Bullock points out that blacks are more likely than whites to bring into court a set of characteristics that tend to predispose judges and juries to assess longer sentences--no matter who happens to possess the attributes. These include type of offense, type of plea, number of previous felonies and place of residence. After stating the evidence for this assertion, Bullock goes on to make the following declaration:

> However, control of these non-racial factors fails to reduce the gross association which we observe to exist between race and length of prison sentence. Instead, it increases the degree of this association, changes its direction, and strengthens its validity.[32]

Bullock's research points out the interesting fact that blacks are likely to receive shorter sentences than whites for the crime of murder (an intraracial offense), but longer sentences than whites for the crime for burglary (an interracial offense). This observation is consistent with that of Judge Joseph Howard who notes that, in Maryland courts, 47 percent of all blacks convicted of raping blacks were returned to their community on probation.[33] On the other hand, Howard reports that all of the 55 death penalties issued for rape in that state were for attacks on white women--only five of the offenders being white. Furthermore, the same survey shows that the average sentence meted out to white males is 5.7 years for raping a black woman and 4.7 years for raping a white woman. On the other hand, the average sentence given a black male is 4.2 years for raping a black woman and 16.4 years for raping a white woman. Such data show a twofold inequity in the dispensation of justice.[34]

The ultimate form of discrimination, racism and injustice in the correctional system (and the nation as a whole) is the differential imposition of the death penalty on minority offenders. Even those who see this form of punishment as an appropriate social response to certain forms of behavior must agree (as has the Supreme Court) that its inequitable imposition on minorities is both illegal and immoral. Research on the use of capital punishment shows that some 54.6 percent of all persons executed since 1930 were black.[35] Given that the "white" category inaccurately includes Hispanics, the discrepancy is even more serious than the figures illustrate.

Minorities are sentenced to death and executed in significantly higher proportion. In Pennsylvania, over a forty year period (1914-1954), only 11 percent of all blacks sentenced to death had these sentences commuted. During the same period, some 20 percent of their white counterparts received commuted death sentences--all having been convicted of first degree murder. In eleven southern states, some 13 percent of all blacks convicted of rape were sentenced to death as compared to 2 percent of all of their white counterparts.[36] Such illustrations might easily be multiplied. The clear fact is that minority life is less valued in the American correctional system than is the life of a white person.

This pattern of inequity continues after the sentence has been given. Petersen and Friday point out a number of disparities resulting from the judicial decision-making process and differences in disposition after conviction.[37] They take special note of the manner in which Ohio courts utilize the state's "shock probation" program, which is intended to be a treatment tool that combines the advantages of incarceration and probation. Under this program, the inmate may file a petition to the court to suspend further execution of sentence no earlier than 30 days and no longer than 60 days after the original sentence begins. In studying the differential use of this program, these researchers conclude that "the non-legal variables of race and education are first and second in their ability to discriminate, while the legal variables of offense type and prior record, rank fourth and fifth."[38] They further state, "Race has a pervading influence when other variables are controlled . . . white inmates were more than twice as likely to be released than black inmates (43.5 percent versus 20.4 percent)."[39]

Minorities are at no less of a disadvantage when they turn to the parole system for relief from imprisonment. The very arbitrary nature of this system makes minorities particularly vulnerable to the caprice of predominately (often exclusively) white parole boards. Because these boards are usually overworked, having as little as ten minutes to review necessary information and make a momentous decision concerning the inmate's fate, they generally rely on a limited number of easily obtainable, albeit sometimes superficial, indicators of the inmate's probability of success if released. The arbitrary nature of the process may be seen in the fact that the primary reason given for denial of parole in California is "negative attitude or personality."[40] In addition, inmates are denied parole for reasons such as poor motivation, poor institutional adjustment, denial of guilt, negative psychological reports or negative reports from the victim. Parole is also contingent on the inmate's ability to secure suitable external arrangements with respect to housing, employment and family situation. Given that these are problematic for minorities under normal circumstances, such requirements place the minority inmate at a severe disadvantage. Hence, it is not unusual for an individual to be granted parole but not released from prison until these external arrangements have been approved.

Further insight can be gained into the extent to which minorities are victims of discrimination in the allocation of parole by noting that, in South Dakota, some 212 of 545 (38.9 percent) white inmates who appeared before the parole board over a fifteen-month period were granted parole, while 70 of 198 (35 percent) American Indian inmates who appeared before the board over the same period were granted parole. Although this difference is not exceptionally large, the pattern suggests systematic bias rather than random practice. The sense here is that the same is true for other minorities and in other states.

Efficiency of presentation will not permit a discussion of the use of good time as a variable for extending the duration of imprisonment of minorities. While this reduction of sentence is generally allocated on a routine basis, it may be taken away arbitrarily at the discretion of the prison security staff--the racial composition of which has already been discussed. Minority inmates are likely to lose "good time" or to receive negative parole recommendations from the security staff for "militant" or "revolutionary" attitudes. These may be reflected in the raised clinched fist, symbolic handshakes, hair styles (too much or too little), reading materials or general demeanor. Similarly, inmates who resist experimental programs (medical as well as psychological) are considered maladjusted, while those who subject themselves to such "scientific" caprice enhance their chances of early release.

G. Treatment Programs for Minorities

There is a long-standing controversy about whether the purpose of imprisonment is punishment or treatment. Perhaps the dichotomy is an artificial and academic device that exists only in theoretical treatises. Perhaps the two can come from the same source or even from the same single act. If so, the controversy is unnecessary. However, if punishment and treatment cannot be blended, it is futile to discuss "treatment" programs in the prison context, because the prison experience is certainly a form of punishment. If it did no more than deprive an individual of the freedom of physical movement, it would be punishment. However, it goes beyond this and removes all opportunity for normal social, economic, political, intellectual, religious and legal expression. Even more devastating is the psychological trauma inflicted by a life of total subordinance. It becomes difficult to assume an honest, intellectual posture when one examines the issue of treatment under such circumstances.

While the entire response of the criminal justice system to an offender might be viewed as treatment, the consideration can be limited to the experiences which occur within the prison setting and are formally labeled as such. With this in mind, one should think of the classification and placement process as the initial phase of treatment. It is here that the inmate is "diagnosed" (usually in a setting of temporary confinement referred to as a diagnostic center), and judgment is made on what type of prison experience will best habilitate the individual, preparing him for a useful place in society. Here again, one must point to discrimination where minority inmates are concerned. This differential and unequal treatment grows out of the fact that there is a hierarchy of conditions among and within correctional institutions. The nature of the individual's prison experience is determined by the placement meted out to him.

Testimony received by the Council supports the notion that the classification and placement process is used to the disadvantage of minority inmates. For example, inmates with a history of gang membership, a phenomenon more common among minorities, are likely to be placed in an isolated situation as soon as they enter the prison system. Further, minorities are more likely to be placed in segregated cells and assigned to the least soughtafter prison jobs.

One of the most thorough studies of the classification process, from the viewpoint of minorities, is that done by Owens in a survey of the Alabama prison population.[41] In Owens' view, "Any classification procedure could be ineffectual for a predominately black population unless strategies, procedures and safeguards were incorporated to obviate cultural, racial and economic discrepancies between those classifying and those being classified." Such a statement strikes at the very core of the classification problem.

Schweber-Koren states that, prior to the 1968 Supreme Court decision which outlawed segregation of the races in prisons and jails (Lee v. Washington, 1968), "Segregation affected all aspects of inmate life: housing, classification, work assignments, dining facilities, recreation, appearance, discipline, and privileges."[42] In spite of the Court's ruling, an investigation of conditions at Attica in 1971 showed that racial discrimination in job assignments was as follows:

> It was found that white inmates held more than half of the jobs in the majority of the highly desirable job categories even though they were only about 37 percent of the total prison population. Black inmates constituted 54 percent of the prison population and they along with Spanish-speaking inmates comprised over 75 percent of the inmates in the metal shop and the grading companies--both regarded as undesirable jobs.[43]

Ideally, placement of an individual in a given correctional facility or in a given position within that facility should be a function of the individual's needs and future potential. The fact is that placement is generally a function of (a) security interests, (b) requirements of institutional maintenance, and (c) availability of alternatives within a given institution. The process not only is very subjective, but also has the danger of being self-fulfilling. That is, an inmate's subsequent behavior may be as much a result of the classification decision as of any predisposition to behave in a given way.

Further, the concern about classification is related to the extent to which it is imitative of stratification activities in the free community. Classification depends heavily on standardized tests--an approach that works to the decided disadvantage of minorities. The matter of discrimination through standardized testing has been raised and discussed in numerous other settings; not the least important of these is the courts, which have ruled against such procedures. Still, critical decisions about the lives of minority inmates are being made (without serious challenge) on the basis of these instruments.

Treatment programs within correctional institutions may take the form of education, employment, or therapy. Some might include recreation and/or religious activity in this set. The latter of these three bodes particular danger for minorities. Support for this sense of apprehension is found in Cobb's statement of opposition to the building of an additional federal prison:

> Given the fact that the population at the Center will be approximately 33% to 50% black, we find this to be an unfavorable position, since what the inmates will be receiving in terms of treatment are those values which are the same repressive views that the society has had for years, in that the inmate they are training will not become anything other than docile to the society that placed him in that position in the first place.[44]

Cobb goes on to register protest against the Asklepieion Society, a program within the U.S. Penitentiary at Marion, Illinois, which uses a range of techniques to bring about "a fundamental change in the personality and life style" of the inmate. One can immediately see the dangers of such a treatment program when it is staffed by whites and directed toward minorities. Consistent with this concern, the Council has received a large number of complaints about the lack of minority-related treatment programs. The following are samples of the comments received.

> Practitioners are not knowledgeable about Hispanic culture, and attempts to involve Hispanic inmates in group sessions to discuss intimate details of their home lives, neighborhoods, among strangers, are doomed to fail. Resistance to do so is often labeled as uncooperative, leading to unfavorable recommendations by counselors who aren't aware of Hispanic psychology.[45]
>
> Blacks have unique qualities which enable them to better serve their troups' rehabilitative efforts.

> The sharing of a common background and heritage decreases social distance between the black service provider and recipient, thus making the chances of successful rehabilitation more likely.[46]

> Sometimes when a Chicano is going through a crisis period or stress, he or she may resort to the mother tongue. Many times it is Spanish and where there is not a bilingual person to help as time passes, the person is not helped and the problem is harder to deal with later.[47]

In some correctional institutions, educational programs compete with individual or group therapy as the most significant form of treatment. Where such programs are available, they hold large potential benefit for minorities. The fact is that the level of educational achievement among minorities in prison is markedly lower than that of minorities in the free community--both being somewhat lower than corresponding white groups. If education is a useful means for improving life chances, then one can readily see the importance of prison education for minorities. However, the potential benefit for minority inmates is contingent on the nature of the programs and the views that those who staff the programs take toward the inmates.

While knowledge on a nationwide basis about curriculum and materials at prison schools is limited, there is reason to believe that these schools reflect the same sort of neglect of minority interests that exists in the larger school system. Specifically, one might expect to find many of the same attitudes toward underachievers, i.e., that they are innately inferior. One might expect to find an absence of courses specifically addressing minority-related issues or incorporating a minority perspective in discussions of broader issues. One might expect to find the educational experience pervaded by dominant middle-class values to the exclusion of minority cultures. In short, one might expect to find that minorities in prison schools face the same set of problems faced by minorities in the free community, plus an additional set generated by the prison context. The latter is illustrated in the following experience of an inmate teacher in the Missouri state prison system:

> Shortly after my imprisonment, the prison officials began to regard me as a "bad" inmate. Why? Well, it began with my assignment as an inmate teacher in the prison school. In my history classes I taught Black history right along with western history . . . . some of the white inmates began telling prison officials that I was using the prison school to brainwash people in Communism and Black Racism

> . . .I was transferred to the prison industries. I was barred from the school and prison library permanently, and the warden ordered burned all my personal papers which consisted of all my research notes on books I was writing and a manuscript copy of my book "Science and Africa."[48]

H. Overt Racism Toward Minority Inmates

Prior to this point, ways in which the correctional system work to the disadvantage of the minority inmate have been discussed. These have, for the most part, been covert, latent, and even unintended abuses of the minority inmate. Lest the impression has been given that all discrimination which minority inmates suffer is of this nature, the discussion will now examine behavior that is grossly and overtly racist and that is designed to punish minority inmates in ways far beyond the treatment extended to white inmates. Such behavior is not a rare phenomenon in American society. Hence, it is not surprising that it exists in penal institutions. The task here is one of documenting the fact that such behavior exists and pointing out its inconsistency with the goals of the correctional system.

There are myriad sources in support of this thesis. The following are excerpts from some of the research and discussion on overt racism in correctional institutions. They are offered without commentary because they are fully explicit:

> A Hall is a tall gray stone medieval looking structure that was built about 133 years ago. Black inmates were housed in here and forced to live with roaches, rats, and six men to a cell only big enough to accommodate two men. In the winter we would nearly freeze, and in the summer the heat was always intolerable. I was forced to live in A Hall for nearly four years, and these were some of my most miserable years in prison.
>
> Prison officials have absolutely no regard for convicts as human beings. When a guard talks to you, he talks to you in a most degrading manner and tone. He says, "Hey, boy, where do you think you're going? Get against that wall! Put your hands up! Empty your pockets! You want to go to the hole for not shaving? Get a shave, you son-of-a . . .! I see we are going to have to beat this nigger's ass for being smart! Hey sunshine, get your . . . over here!"[49]

In its hearings across the country, the National Minority Advisory Council has received repeated testimony about overt racism practiced in correctional facilities. One witness described an event in which an American Indian inmate was stabbed by a white prisoner in the presence of a prison official. The latter neither intervened in the attack nor imposed sanctions on the attacker. After a period of hospitalization, the American Indian inmate was sent to solitary confinement for failure to cooperate in an investigation of the incident. Another witness described the brutal chaining of the wrists, waist, and legs of an American Indian inmate by prison officials. The inmate remained in this condition for a period of two weeks. When asked how the chained man was expectd to use toilet facilities, the attending guard responded, "That's his problem."

In other testimony before the Council, there have been reports of minority inmates suffering such abuses as denial of blankets in winter, denial of utensils for eating, denial of medical services, mental harassment and physical beatings. Such abuses as racial slurs or name calling are apparently a regular part of the prison experience for minority inmates. Carroll in his study of race relations in a maximum security prison made the following observation:

> It is almost the universal view of black prisoners at ECI that they are the object of racial discrimination in every area of institutional life. As they see it, the fact of their race condemns them to the most undesirable jobs, limits their access to the more desirable cells, and makes the attainment of work release and parole more difficult. The area of discipline is the major area for which the strongest feelings of discrimination are verbalized.[50]

In some cases, prison personnel use the racial animosity among inmates to create unfavorable circumstances for minority prisoners. Wright cites an example of this in the following comment:

> There is unquestionable evidence that at times prison officials have directly encouraged outbreaks of racial violence in prisons. Guards act as provocateurs, for example, spreading rumors about minorities whom they claim "snitched" on white prisoners. Guards often set up a disliked of one race to be stabbed by hostile prisoners of another race. While there undoubtedly are prison administrators who oppose such actions by guards, they refuse categorically to take the necessary steps to prevent them from occurring. It is hard for prison officials to regulate the racism fostered among

> prisoners, however, it is equally hard to regulate the racism among guards.[51]

If the list of atrocities were extended, it would include (as reported to the Council) inmates being placed naked into unheated punishment cells during the coldest winter weather; beating of handcuffed prisoners; confining inmates to bare concrete cells with no clothing, bed, bedding, or toilet tissue; macing inmates in their cells; placing an inmate on the hood of a truck and driving at a rate of sixty miles per hour over an open field; stripping prisoners and forcing them to lean naked against a wall with their noses pressed for as much as six hours at a time; transporting inmates in wire cages where they are required to lie flat while the cages are stacked on the back of a truck. Such medieval brutalities are, of course, not strictly limited to minorities. However, it is clear that minority inmates are disproportionately victimized by such criminal behavior.

I. Minority Inmate Response to Racism

There are, of course, a range of alternative responses by minority inmates to the conditions that have been described. Perhaps the most "radical" is the prison rebellion. The period immediately following mid-century marked the onset of a rash of such responses. Between April 1952 and September 1953, there were approximately thirty prison rebellions. This was more than had taken place during the previous quarter century. This may have been a dreadful set of circumstances for prison administrators but, as John O. Boone, former Commissioner of Corrections of the State of Massachusetts, observes in the following statement, it was not entirely negative from the perspective of the minority inmate.

> At Atlanta Federal Prison I often observed black men who had embraced the Islamic faith straighten up from a position of shuffling and bowing and head scratching and look prison officials squarely in the eyes as men after the contagion of the revolutionary mood and temper [was] generated in the aftermath of the rebellions of the early fifties.[52]

Prison rebellions were by no means limited to the fifties. The number increased through the next two decades. In 1969, there were 39 reported prison rebellions. In 1970, that number increased to 59. The following year was marked by the most notable prison rebellion of our day, the Attica revolt. That event need not be reiterated here save to point out the fact that, at the time of the rebellion, some 70 percent of the inmate population was black and Puerto Rican, while the institution employed not a single minority security officer. The subsequent events left some 43 persons dead (33 inmates and 10 guards), another 200 inmates wounded, and an estimated $3 billion in damages.

In the worst prison uprising since Attica, inmates took control of the New Mexico State Penitentiary in early February 1980 and held a dozen guards hostage for a day and a half. During the period of inmate control, fifteen inmates were tortured, mutilated and killed in what may well have been racially motivated reprisals by fellow prisoners. In recapturing the prison, National Guardsmen and state policemen killed at least 35 inmates and wounded more than 50 others. Damage estimates were set at more than $60 million and the prison completely shut down to inmate use. In the aftermath, inmates blamed racial discrimination, insensitivity of (predominately white) guards and intolerable living conditions for the incident.

Going almost unnoticed at the same time were less precipitous inmate uprisings at New York's Rikers Island and Attica prisons. For that matter, there is hardly a prison in the nation that has not seen some form of protest by its inmates in recent years. Nor are there many months (or even weeks) that pass without an incident of some sort in a correctional institution. In a large majority of these incidents, where minority inmates are involved, the issue of racial injustice and inequity is one of the motivations.

Although prison rebellions may be the most dramatic form of minority response to the inequities of the correctional system, it is not necessarily the form most frequently employed. An alternative is described by Chapman, in the following account of his experiences in the Missouri State Penitentiary:

> I started studying civil and criminal law so I could combat the official harassment with suits in the courts. I filed a civil rights suit in the Federal District seeking an injunction and/or restraining order forbidding the warden to further deprive me of my constitutional rights, and practice of racial discrimination under color of state law.[53]

In the course of his very insightful discussion, Chapman indicates other methods used by inmates to resist racial injustice in prison. These efforts to resist racial injustice in prison include writing to congressmen and state representatives, preparing petitions with hundreds of inmate signatures for presentation to the warden, writing appeals to the federal Department of Justice, seeking assistance through state human rights offices and obtaining the help of private prisoner aid groups. In many instances, these activities are not carried out by single individuals but are the concerted work of groups of inmates, giving them much more weight. Haywood Burns, former executive director of the National Conference of Black Lawyers, makes note of such organized efforts in the following comment:

> Great attempts at self help are being made through the organization of black groups within the prison. Afro-American Societies springing up at various institutions engage in a wide range of programs from studying black history and culture, to carrying out political activity directed at their grievances. A survey of activity within the nation's prisons reveals that black prisoners are not only men and women on the move, but increasingly they are moving from a basis of group solidarity with concerted action.[54]

There are some who view this organization of inmates with a sense of alarm and see the rise of assertiveness of minority groups as an emerging crisis for prison administrators. They view minority cultural groups as potential sources of conflict among inmates (such as may have been the case in the New Mexico State Penitentiary uprising). Consequently, prison officials have used a variety of excuses to isolate identified group leaders and separate members of these groups. While there may be some measure of justification for the repression of minority inmate organizations on a selective basis, it would appear that this backlash is generally an extension of the oppression of minorities that has existed over time.

J. Outcomes of Minority Imprisonment

As we move toward a conclusion of this discussion, the question of outcomes for minority inmates must not be missed. Very simply put, the question is, "Does the experience of imprisonment have the desired impact on those minorities who suffer it?" This question is asked quite apart from the views of the prison experience. We are not convinced that a positive outcome is sufficient reason for maintaining an inequitable arrangement. We do not believe that "the end justifies the means." Whatever positive outcomes might be secured through the current practices of the correctional system cannot be applauded until more acceptable avenues for securing them are explored.

The question of successful outcomes might be examined from a number of vantage points. Clearly, the correctional system must ask whether the former inmate is returned for supervision by that system. Hence, the more gross (but more widely used) measure of success is the absence of known recidivism. This is, of course, a somewhat elusive index. Perhaps an even more appropriate measure of success is the extent to which the former inmate is able to move into a satisfying and productive position in society. That is, under ideal conditions, one would be unable to distinguish former inmates (as a group) from the population that has not suffered the prison experience when the two groups are measured by the criteria of this society. Even more optimistically, one might hope that the former inmate's post-prison experience would be an improvement upon that of minority group members in this society, since the latter are a distinguishable segment of American society. Obviously, the latter is too much to expect of the correctional system given that the combined efforts of all other social institutions in this nation are unable to achieve such an outcome.

The most general conclusion that can be drawn concerning post-prison adjustment of minority ex-inmates is that it is fraught with the same set of problems as pre-prison adjustment. The expectation would be that recidivism among minority group members released from prison is greater than that for their white counterparts. Minorities are represented in disproportionate numbers among the population of recidivists in the same way that they are overrepresented in all other phases of the criminal justice process. One would be surprised to find otherwise. Those factors, be they psychological or social, which lead to minority involvement in the criminal justice system in the first place are not alleviated by imprisonment. Just as chances for arrest, prosecution, and conviction are greater for minorities--apart from any prison experience--so they are for the minority inmate upon release from prison.

In his study of the post-prison experience of blacks, Swan notes that there are certain strains built into the parole process that make it more difficult for minorities to move from prison back into the free community.[55] Among other things, the parolee is expected to be "perfect," i.e., to engage in less non-normative behavior than the average individual. To ensure such behavior, the ex-inmate is provided with even greater surveillance than the average individual. Hence, the probability of coming to the attention of the criminal justice system is increased by two significant factors. Even more important is the fact that the black parolee is expected to function normally in an abnormal environment. He is expected to maintain regular employment in a context in which unemployment is at least twice the normal level. He is expected to maintain family relations in a setting in which a wide range of negative forces impact on the family. He is expected to shun criminals and criminal activity in a situation in which crime is particularly high. He is expected to relate to a parole officer who probably does not understand the culture of minorities. His failure is quite likely under such conditions. Swan's comment on this situation is as follows:

> Given the inadequate conditions under which black parolees are required to function, and the inability and/or unwillingness of parole officers to adapt to the increased political awareness of parolees, even the black parolee who is defined by the parole system as most likely to succeed finds it most difficult to do so. Consequently, many parolees operate on the basis of the inevitability of their return (to prison) at some point during the re-entry transition.[56]

In discussing the issues of outcomes of the prison experience, one should consider the fact that many minority inmates leave prison with a sense of bitterness and hostility, or with the hunger for revenge and vindication because of the inequitable treatment accorded them by the criminal justice system. Thus, minority inmates can leave the correctional institution with an attitude more negative than that with which they entered. In this vein of thinking, Aswadu identifies two alternative responses of minority inmates to the prison experience. On one hand there are those whose spirits are broken by imprisonment so that they no longer question the validity or morality of the correctional system (or racial injustice in this society). They accept the system's negative valuation of themselves and thus become incapable of coping with the post-prison world.

On the other hand, there are those who are able to cultivate a healthy black ideology and to develop a greater sense of political awareness, appreciation for themselves and identification with their racial origins. The prison experience gives them opportunity to reflect, to analyze and to understand their circumstances, and to become an aggressive force for social change. Many go on to improve their level of educational and vocational achievement and/or to participate in a variety of community action or human service endeavors. The prototype of such ex-inmates is, of course, Malcolm X. However, it is obvious that the criminal justice system is not designed to aid minority inmates in conforming to that model.

As a final note on the outcomes of prison experiences, we must look briefly at the effect on the families of minority inmates. It is somewhat paradoxical that there has been such widespread avowed public concern about the welfare of the minority family (assumed to be largely a unit without an adult male presence) when, at the same time, there has been such a concerted effort to take minority males out of the free community via imprisonment. Whatever negative consequences are assumed to be attendant with the absence of a male presence in the minority family are certain to be aggravated by the imprisonment of such large numbers of minority males for such prolonged periods of time, making even temporary or periodic interaction impossible. Further, as noted earlier, the location of most correctional facilities is such as to make minority family interaction extremely difficult, if not impossible.

K. Alternatives to Minority Imprisonment

While few observers would claim that the answer to the problems which attend imprisonment have been found, many would agree that a step in that direction is to suspend further construction of prisons. In effect, such a moratorium would be a clear signal that we no longer plan to rely primarily on this form of response to deal with law violators. John O. Boone, former Commissioner of Corrections for the State of Massachusetts, suggests that through a moratorium on prison construction, "society will get used to the idea and public administrators will come to appreciate the movement and begin to pursue good alternatives."[57]

It seems reasonable to assume that a moratorium on prison construction would work to the advantage of minorities under correctional supervision, given that they represent such a large share of the prison population. Such a moratorium would eliminate the predisposition (or obligation) of our society to utilize newly constructed facilities and would release additional resources for the development of useful alternatives. An equally compelling argument is the fact that alternatives to incarceration are generally more economically efficient. Under current construction costs, we place a tax burden of approximately $50,000 on American citizens for each new prison bed. The cost of maintaining an individual in prison approaches $4,000 while the cost of maintaining that same individual under supervision in an alternative setting is approximately one-tenth that amount. This does not take into consideration the cost of public assistance for dependents of prison inmates nor the loss suffered through removal of potentially productive persons from the labor force.

As something of a median position between those who would build bigger and better prisons and those who would have few or no prisons, there are those who would divert available prison construction funds into the improvement of current facilities. Given the current state of most of the nation's correctional facilities, this would seem to be "pouring good money after bad." Still another compromise is the building of smaller facilities. Advocates of this position see the current problem as one of size and believe consequences of imprisonment would be far more positive were facilities less massive and impersonal. In opposition to this view, some would argue that prisons of whatever size violate fundamental principles of social and psychological rehabilitation.

The alternative to incarceration, which seems to be gaining the most professional support in recent years, is the community-based correctional program. These programs are based on the notions that (a) only about one-fifth of the prison population represents a threat sufficient to require incarceration, (b) over 90 percent of the imprisoned population will eventually be returned to the community, (c) the purpose of corrections should be to habilitate and integrate the offender into society, and (d) the attitudes and skills required for success in the free community cannot be developed in the prison context.

Probation and parole are forms of community-based corrections that have been used for some time. Recent developments have added to the traditional programs of probation and parole. Together, these alternatives to incarceration bring to the correctional system services that reduce the shock of prison-to-community transition, decrease the average duration of stay in prison, eliminate altogether those prison experiences which are nonproductive or unnecessary, provide habilitation and adaptive training which is unavailable in prison and avoid the negative "prisonization" experience that accompanies incarceration.

Community-based corrections hold particularly positive potential for minorities under correctional supervision. Perhaps most importantly they mean the reduction of the kinds of abuses that have been outlined earlier. In addition, community-based corrections permit continued linkage of the minority offender with the community from which he comes and to which he must return. The supervised individual can maintain contact with family, church, school, employment and other normal aspects of life. Moreover, this can be done under conditions of supervision and assistance which facilitate growth, adjustment, and more effective adaptation than was the case prior to conflict with the law. This cannot be done in an isolated, rural prison setting.

Such programs permit greater participation of minorities as staff, consultants and administrators. Further, they inject a measure of reality into treatment which is absent in the prison setting. The staff of community-based programs must deal with problems of employment, housing, family relations, etc., without the luxury of more abstract approaches to treatment. This obviates the need for role playing, creation of hypothetical problems or philosophical discussions. The problems are real and present. In many instances they are the very problems that are major contributing factors in minority conflict with the law. In the prison treatment setting, the problems addressed are left, to a much greater degree, to the therapist's discretion and perception of need. In the community treatment setting, tangible needs are more likely to intrude, making the experience much more relevant to the minority individual.

Because the community-based program can be located in the offender's own community, the minority individual can have much greater access to the network of informal support provided by local groups and organizations. This multiplies and reinforces the efforts of the correctional staff. Further, because those who provide supervision and direction are more likely to be of similar cultural background, the sense of alienation and distance which militates against successful outcomes in the prison will hardly be present in the community program. It is important, therefore, that the community-based program be based in a community with which the offender identifies and be staffed by persons who are familiar with and comfortable with the offender's culture. This highlights the need for community-based programs for American Indians, Asian-Americans, minority women, Hispanics and blacks.

Alternatives to incarceration hold benefit for the minority community as well as for the minority offender. The favorable difference in cost of community-based corrections has been suggested. In testimony before the Council, Harriet Quinn, member of the North Carolina Task Force on Criminal Justice, called for "alternative sanctions such as restitution by the offender to the victim, or the assignment of the offender to community service projects." This approach holds a good deal of validity for minority communities. Contrary to popular opinion, it is the minority community that is most victimized by crime. Hence, programs of restitution and community service would do much to relieve the suffering that crime causes these communities. Imprisonment of minority offenders does them little good.

L. Conclusion

A range of inequities has been examined in the experience of minorities who come under supervision of the American correctional system. The focus has been, in turn, on inherent conflicts between minority culture and correctional practices; discrepancy in racial identification of those who control and those who are controlled by the correctional system; characteristics of the imprisoned population; inequity as expressed in duration of confinement, treatment and overt behavior; and the responses, outcomes and alternatives to minority imprisonment.

This analysis has been limited to unique and specific problems faced by minorities or to a minority perspective of larger problems. There are many problems (i.e., overcrowding, inadequate funding, insufficient staff training) that have not been addressed here because they are generic to the correctional system. To the extent that minorities are over-represented in the system, all of these are important to this report. Further, this report has examined problems that are really symptoms of more fundamental and pervasive ailments. This report has not addressed causes. Hence, this report must be viewed as the first phase of a much more comprehensive task. Further research is desperately needed. Even more necessary is immediate action to correct the vast set of problems which need no further documentation. The essence and function of this report are a demand for humanitarian, moral and legal responses to the injustices of the correctional system. The basis of this appeal may be summarized in the following statements:

1. Although limited research has been conducted and meager data collected on the issue, it is evident that there are numerous points of conflict between minority culture and correctional philosophy.

2. The inability of correctional staff to accept minority culture (religion, music, language, etc.) has resulted in pervasive distrust of and hostility toward that staff on the part of minority inmates.

3. Suppression of minority culture constitutes inequitable, abusive treatment of minority inmates and elicits minority inmate responses that frustrate the objectives of the correctional system.

4. Many of the regulations that govern details of prison experience do not incorporate the perspective of minority cultures, creating special disadvantage for minority inmates.

5. The almost total control of prison security staff over the life and fate of inmates holds large potential for abuse of minority inmates given the current racial composition of that staff.

6. The correctional system (in total, part, or phase) does not have minority representation among its personnel that in any way approximates minority representation among the supervised population.

7. The marked paucity of minorities in administrative, policy-making and professional positions greatly enhances the possibility of unfavorable treatment of minorities under correctional supervision.

8. The current practice of locating correctional facilities in isolated, largely white, rural areas minimizes the opportunity to secure proportionate minority staff in these facilities.

9. Minorities are grossly overrepresented in the nation's prison population, comprising between one-half and two-thirds of that group--about three times the expected amount.

10. The full number of minorities under correctional supervision is concealed by failure of many units to adhere to a policy of racial enumeration and by identification of Hispanics as "white."

11. Although absolute numbers are smaller, overrepresentation of minorities among female inmates is even more acute than among males, and both the number and proportion appear to be increasing for females.

12. Most minority inmates are under age thirty, are from low socioeconomic origins (as measured by income, occupation, or education), and have been convicted of property-related or drug-related offenses.

13. Fiscal cutbacks, overcrowding and inadequate resources for correctional programs have a particularly negative impact on minorities because of their large presence in the correctional system.

14. Minority offenders are more likely to receive a prison sentence, to receive a longer prison sentence, and to serve out a longer portion of that sentence than are their white counterparts.

15. Personnel, procedures and conditions that determine "good time," parole or special release work to the disadvantage of minorities are barriers to their early return to the community.

16. Captial punishment is the ultimate expression of racism in criminal justice given that (all else being equal) minorities are more likely to be sentenced and/or executed than are their white counterparts.

17. Inmate placement (across or within facilities, by occupation or program) reflects discrimination against minorities and results in their being forced to endure less favorable prison conditions.

18. Correctional "treatment" lacks a minority perspective and seeks to subordinate or "brainwash" the inmate, forcing adherence to a set of values other than those of his or her own culture.

19. Absence of minority staff and perspectives in prison therapy or other habilitative activity creates an inequitable situation for minority inmates and reduces the potential for positive outcomes.

20. Verbal and physical abuse (torture) from correctional staff solely because of the inmate's racial origin is a well-documented aspect of the experience of minorities under correctional supervision.

21. Racism in the correctional system is extensive and intense, subtle and overt, institutional (through rules that disfavor minorities) and personal, and includes provocation of inmate-on-inmate attacks.

22. Resistance to racism in the correctional system has taken the form of riots and other organized protests, but more frequently is expressed in appeals to the courts and/or other community action agencies.

23. Minority inmates are becoming more politicized, sophisticated, aware of and resistant to racism in the correctional system as a result of the emergence of "culture groups."

24. Correctional staff have become apprehensive about minority culture groups, fearing insubordination, polarization and potential conflict among inmates, or between inmates and staff.

25. Limited research and inappropriate (or ambiguous) criteria of "success" make it virtually impossible to specify consequences of the minority correctional experience with any degree of assurance.

26. The correctional experience does not eliminate "minority status" for the offender but instead adds to the problems and constraints associated with that social stigma.

27. Inequitable treatment by correctional staff leaves many minority offenders hostile, vindictive and more disposed (even better prepared) to return to a life of criminal behavior.

28. Although the correctional experience is designed to produce docility and compliance, it creates racial and political awareness and aggressiveness among some minority offenders.

29. Continued construction of large, rural facilities for imprisonment of minority offenders is illogical and impractical from fiscal, correctional, and humanitarian perspectives.

30. The allocation of funds for prison construction creates the necessity of using these facilities, and diverts resources from programs that hold positive potential.

31. Incarceration frustrates the goal of satisfying the productive social integration of minority offenders, and compounds the normal set of problems associated with social, economic and family adjustment.

32. Most minority inmates are not a threat to the community and could be released to community-based programs, eliminating problems normally associated with imprisonment and reintegration.

33. Community-based alternatives to corrections identify and address problems specific to the individual's normal context of living, permit greater participation of minority staff, and maintain links with cultural communities, thus enhancing outcomes for minorities.

34. Minority communities are those most victimized by crime and thus would benefit more from alternatives that require restitution and service than from current practices of imprisonment.

35. Current practices of incarceration of minority males and females work inequitable hardships on minority families (particularly children), both as individual units and as a social institution.

36. The nature and outcome of minority experiences in corrections are known largely through speculation, personal testimony and piecemeal observation rather than through systematic, empirical study.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, Raleigh, N.C., December 12, 1977.
2. Dan German and Marvin Hoffman, "The Development of Racial Differences in Children's Orientation Toward the Legal System," *Journal of Social and Behavioral Sciences*, Vol. 21 (1975).
3. J.H. O Dell, "Introductory Comment," *Freedomways*, Vol. 7 (1969), p.226.
4. Lynne Hollander, "The Adjustment Center--California's Prisons Within Prisons," *The Black Law Journal*, Vol. 1 (1971), p.156.
5. Ibid.
6. William Turner, "Establishing the Rule of Law in Prisons: A Manual for Prisoners' Rights Litigation," *The Black Law Journal*, Vol. 1 (1971), p.106.
7. Ahmad Aswadu, "A Black View of Prisons," *The Black Scholar*, Vol. 2 (1971).
8. Ibid.
9. Robert Johnson, *Culture and Crisis in Confinement* (Lexington, Mass.: Lexington Books 1976).
10. Robert Lee, "Hispanics: The Anonymous Prisoners," *New Jersey Correctional Master Plan* (1979).
11. Joan Moore et al., *Homeboys: Gangs, Drugs, and Prison in the Barrios of Los Angeles* (Philadelphia: Temple University, 1978).
12. Transcript of the National Minority Advisory Council on Criminal Justice, Judge Bruce Wright, November 9, 1978.
13. Board of Control of State Institutions. *Rule Book for Iowa State Penitentiary* in *The Sociology of Punishment and Corrections* Norman Johnston, et al., eds. (New York: John Wiley, 1962).
14. Ibid.
15. Ibid.

16. Edwin Sutherland and Donald Cressey. *Criminology* (Philadelphia: Lippincott, 1978), p. 571-572.

17. *Rule Book for Iowa State Penitentiary*, op. cit.

18. *Rule Book for Iowa State Penitentiary*, op. cit.

19. *Rule Book for Iowa State Penitentiary*, op. cit.

20. *Rule Book for Iowa State Penitentiary*, op. cit.

21. Julius Debro, unpublished study, 1978.

22. C. Schweber-Koren, "Prison Education: Perspectives Past and Present," in *Blacks and Criminal Justice*, Charles Owens and Jimmy Bell, eds. (Lexington, Mass.: Lexington Books 1977), p. 101.

23. Ibid.

24. Transcript of the National Minority Advisory Council on Criminal Justice, Los Angeles, California, November 1977.

25. Transcript of the National Minority Advisory Council on Criminal Justice, New York, New York, July 1977.

26. Transcript of the National Minority Advisory Council on Criminal Justice, September 1977.

27. Eleanor Wyrick and Otis Owens, "Black Women: Income and Incarceration," in *Blacks and Criminal Justice*, Charles Owens and Jimmy Bell, eds. (Lexington, Mass.: Lexington Books 1977), pp. 90-91.

28. U.S. Bureau of the Census. *Census of Population: 1970* Subject Reports Final Report PC(2)-4E, Persons in Institutions and Other Group Quarters (Washington, D.C.: U.S. Government Printing Office, 1973).

29. Ibid.

30. Ibid.

31. Ibid.

32. Henry Bullock, "Significance of the Racial Factor in the Length of Prison Sentences," *Journal of Criminal Law, Criminology and Police Science*, Vol. 52 (1961).

33. Ibid.

34. Joseph Howard, "Racial Discrimination in Sentencing," *American Judicature*, Vol. 59 (1975), p. 123.

35. Sue Reid, *Crime and Criminology* (New York: Holt, Rinehart, and Winston, 1979), p. 578.

36. Ibid.

37. David Peterson and Paul Friday, "Early Release From Incarceration: Race as a Factor in the Use of 'Shock Probation,'" *Journal of Criminal Law and Criminology*, Vol. 66 (1975).

38. Ibid.

39. Ibid.

40. D'Amy Bailey, "Inequitites of the Parole System in California," *Howard Law Journal*, Vol. 17 (1973), p. 803.

41. Charles Owens, "Classifying Black Inmates: The Alabama Prison Classification Project," in *Blacks and Criminal Justice*, Charles Owens and Jimmy Bell, eds. (Lexington, Mass.: Lexington Books, 1977).

42. C. Schweber-Koren, op. cit., p. 28.

43. Ibid.

44. Ibid.

45. Transcripts of the National Minority Advisory Council on Criminal Justice, Los Angeles, California, November 1977.

46. Ibid.

47. Transcripts of the National Minority Advisory Council on Criminal Justice, Chicago, Illinois, September 1977.

48. Frank Chapman, "Pages From the Life of a Black Prisoner," *Freedomways*, Vol. 9 (1971), pp. 339-340.

49. Ibid.

50. Leo Carroll, *Hacks, Blacks and Cons: Race Relations in a Maximum Security Prison* (Lexington, Mass.: Lexington Books, 1974).

51. Erik Wright, *The Politics of Punishment: Prisons in America* (New York: Harper and Row, 1973).

52. John Boone, "Prison Construction Moratorium: Its Relationship to Crime Prevention," in Black Perspectives on Crime and the Criminal Justice System, Robert Woodson ed. (Boston: G.K. Hall, 1977), p. 123.

53. Chapman, op. cit., pp. 339-340.

54. Haywood Burns, "The Black Prisoner as Victim," The Black Law Journal, Vol. 1 (1971), p. 123.

CHAPTER VIII

THE INEQUALITY OF JUSTICE: EDUCATION AND RESEARCH

> Not one black, Hispanic or Asian or Indian person has ever received a dollar to do research from the Juvenile Justice Institute to frame issues upon which other initiatives are raised so that they can commission a white person to advise them [LEAA] as to whether the Indian program ought to continue or not. They follow the advice of these people...98% of those funds are going to go into white research hands.[1]

A. Introduction

The education and training of criminal justice personnel and the results of relevant, scholarly investigations can do much to upgrade the quality of criminal justice systems across the country. In the first case, education is frequently associated with the professionalization of occupations. According to Miller and Fry, "Professionalization is expected to bring about an improvement in [job] performance and is seen as a dependable avenue to more rewarding work for individuals."[2] As the educational level of criminal justice personnel rises, the criminal justice system, at all stages, should then be more sensitive and responsive to the justice needs of a multi-cultural, technologically advanced society.

In the case of scholarly investigations, research findings have the potential to lead to innovative programs, progressive planning, and greater understanding of cause and effect relationships. In addition, key studies may be the basis of policy formulation and implementation. Pilot projects, demonstration grants, experimental programs, and evaluation studies may provide the insight needed for more effective administration of justice.

In both cases, the question becomes, "Who should be responsible for encouraging and supporting education and research in the criminal justice system?" The answer became blatantly apparent when the Omnibus Crime Control and Safe Streets Act of 1968 created the Law Enforcement Assistance Administration (LEAA) and established the National Institute of Law Enforcement and Criminal Justice (NILECJ) as LEAA's research arm. From 1969 to 1975, NILECJ provided approximately $152 million in research monies. Through the Law Enforcement Education Program (LEEP), LEAA also provided during that same time period approximately $200 million in grants and loans for education to people planning to enter or already working in law enforcement careers.

No private organization or institution can provide the financial base needed to undertake such large-scale education and research activities. Because criminal justice systems are administered by some form of government--local, state, or federal--it seems appropriate that the federal government should assume a leadership role, and commit resources to the areas of criminal justice education and research. The federal government should be urged to continue providing the needed leadership and resources, for both are vital to the improvement of the administration of justice in the United States.

Because LEAA has had such an active role in both criminal justice research and education, it is important to review this agency's strengths and weaknesses in order to provide direction for the future. While many of the comments in this chapter deal with LEAA, it is crucial to note that such comments are relevant to any federal body that may supersede LEAA. The scope of this chapter is not limited to LEAA, particularly in the case that this governmental unit may give way to another. Rather, the following observations observations are applicable to any agency desiring education and research activities that are responsive to the needs of minority communities.

One of this chapter's premises centers around the underutilization of minorities as employees in the criminal justice system. According to a report issued by LEAA, 6.5 percent of law enforcement officers in 1974 were black, while 2.3 percent were of Hispanic origin.[3] In this report, law enforcement officers include policemen, detectives, sheriffs, bailiffs, marshals and constables. For the same year, 17.7 percent of all correctional officers were black and 3.1 percent were of Hispanic origin. This report notes that the minority representation in the uniformed police and correctional forces was still below the proportions of minorities in the service populations of these agencies.

Another premise of this chapter touches on the lack of a centralized source of data on the employment patterns of minorities in criminal justice positions. Table VIII-1 offers some limited information on the occupational distribution of minorities in criminal justice related positions. Some data are cited for the general category of "minority" with no delineation of specific minority groups. Other data are for "black" or "Spanish-American" with no information being reported specifically for Asian-Americans or American Indians. From the table, it appears that a higher percentage of minorities are found in juvenile administrative or warden positions. No explanation exists for this phenomenon. While the table contains distributions for minorities, more data are needed to explain recruitment policies, issues in reten-

Table VIII-1

Some Employment Patterns of Minorities in Criminal Justice

	Percent Minority	Percent Black	Percent Spanish American	Percent Other Minority
Administrators or Wardens of Correctional Agencies[a]				
Adult Institutions	9			
Juvenile Institutions	13			
Probation, Parole Agencies	4			
Police Chiefs or Sheriffs[a]	1			
Line Custodial Workers[a]				
Adult Institutions		17.8	2.6	
Juvenile Institutions		32.4	2.7	
Sheriffs Jails		13.3	3.8	
Persons Employed in Correctional Agencies[b]				
Officials, Administrators		9.3	3.3	1.2
Professionals		11.6	2.4	0.9
Technicians		15.8	5.5	1.4
Protective Service (e.g., guards, cottage parents)		17.8	3.1	0.8
Paraprofessionals		30.4	4.8	2.0
Office clerks		11.4	3.5	1.6
Skilled craft		7.5	2.2	0.6
Maintenance		20.0	4.9	1.2

[a] Source: Law Enforcement Assistance Administration, *Summary Report*, Volume 1, The National Manpower Survey of Criminal Justice (Washington, D.C., Government Printing Office, 1978a).

[b] Source: Law Enforcement Assistance Administration, *Corrections*, Volume 3, The National Manpower Survey of Criminal Justice (Washington, D.C.: Government Printing Office, 1978b).

tion, salary factors, experience, educational background, and employment policies as they relate to minorities. These factors may help to identify employment patterns of minorities in criminal justice systems. Finally, the LEAA reports did not provide data on minorities working in the judiciary. This would represent one area where data are practically nonexistent.

Minorities are needed in all parts of the criminal justice system--as police officers, parole officers, probation officers, attorneys, judges, correctional officers, police administrators, and prison administrators. Hence, the "criminal justice system" refers to the process of the administration of justice from the point of detection, to the court, to the case disposition. "Criminal justice personnel" refers to the persons employed in all aspects of this process.

The Education section of this chapter sees the role of training as a means to help alleviate the problem of the underutilization of minorities. The Research section highlights, among other things, the need for research to provide data on the employment patterns of minorities in criminal justice. Both areas are crucial if minorities are to have meaningful roles in law enforcement, judicial activities, and correctional environments.

B. Education: LEAA's Focus

The majority of educational and training activities undertaken by LEAA were not oriented toward the needs of minority communities. At first reading, this may seem like an unfair overgeneralization; however, a broad look at LEAA's activities provides support for the statement. Because it is not the purpose of this chapter to offer a detailed overview of LEAA, this discussion will highlight points that are significant for the topic of minorities and criminal justice.

According to Jacobs and Magdovitz[4] and Salas and Lewis[5], huge amounts of LEAA's educational and training funds have gone to law enforcement in-service and preservice training. The Law Enforcement Education Program (LEEP) provides nonrepayable grants to students already employed in criminal justice as well as loans to other students preparing to enter the field of criminal justice. The LEEP funds are given directly to approved colleges and universities and eligible students apply for them. Preservice loans are awarded after the in-service students have received their grants. In addition, only about 15 percent of a school's LEEP funds can be earmarked for preservice loans. Receipt of LEEP dollars is based on a school's criminal justice curriculum, which must meet eligibility requirements.

Several points are worthy of emphasis here. First, education dollars go to the colleges or universities rather than directly to eligible students. Second, those persons already employed in the criminal justice system receive highest priority. Herein lies the injustice of the program.

During the sixties, LEAA perceived employed police officers to be in need of further education and training. The civil unrest of the sixties, accompanied by reports of police brutality, paved the way for this perception. Commissions, civil rights groups, review boards, and others busily analyzed the role of the police in civil disturbances. The consensus of the commissions and reformers was that, to improve law enforcement, the quality of the individual police officer had to be upgraded through higher education. Education was seen as one way of reducing the authoritarianism, brutality, racial prejudice, impulsiveness and minority police tension associated with police departments. Because the white policeman, being a reflection of the larger community, often has difficulty relating to minority group members, additional education was thought to be a method to increase the knowledge, sensitivity and decision-making ability of the officers. The 1967 Task Force on the President's Commission on Law Enforcement and the Administration of Justice mirrored this view by stating, "The quality of police service will not significantly improve until higher educational requirements are established for its personnel."[6]

It should now be clear that LEEP was established to benefit nonminority police officers. Those nonminority officers with meager education elevated racial tension by having stereotypical, and often racist, views about minority groups. Because police officers represent the criminal justice system to the public, efforts were mounted to provide them with a liberal college education. The educational funding was for the purpose of making the majority more sensitive to the minority.

Another point supports the assertion that LEEP was devoted to the education of nonminority police officers. According to the International Association of Chiefs of Police, only 6 percent of the nation's law enforcement officers are black. Since well over 90 percent of all law enforcement officers are nonminority, then LEEP funds were supporting nonminority criminal justice education.

From its inception, LEAA has spent a disproportionate amount of money on police officers. The figures compiled by Jacobs and Magdovitz, as well as others, reflect this.[7] In 1970, LEEP funds totaled $18 million which was spent on 46,869 in-service students (already employed in criminal justice), and 7,909 preservice students (anticipating entry into the criminal justice field). Of the 46,869 in-service students, 38,229 were police officers. In 1973, LEEP spent $40 million on education, with about 80 percent going to in-service students; about 80 percent of LEEP students were in-service police officers, and the remainder held prison or court positions.[8] Clearly, LEEP was designed mainly for those who are already law enforcement officers, the preponderance of which are white.

The LEEP also failed to respond to the needs of minority law enforcement personnel. In 1974, about 13.1 percent of all new hires in police departments were minorities. From 1960 to 1970, the percentage of blacks employed as policemen and detectives rose from 3.6 to 5.3. These figures indicate that more minorities are being employed by law enforcement agencies. The needs of minority officers often differ from those of majority officers. For example, Kelly and West report on the racial transition of the Washington, D.C., police force. In 1966, 17 percent of 3,100 officers were black. By 1970, 38 percent of 5,100 officers were black. These officers of minority background were younger, fewer had military backgrounds, and more reported job stress as compared with nonminority officers.[9] Nicholas Alex, in his book on black police officers, cites numerous examples of the ways in which black officers differ from white officers. He also notes the stress that minority officers are subjected to that is based on the attitudes and dispositions of their co-workers.[10] His observations indicate that the in-service training needs of minority officers may require special attention.

1. LEEP Colleges and Universities

Nonminority colleges and universities have been the primary recipients of LEEP dollars. Participation of black and Hispanic colleges in LEEP has been scarce. According to Salas and Lewis, this underrepresentation may be due to unqualified faculty, lack of minority criminal justice personnel, and inadequate administrative management on the part of predominately minority schools. These authors further state, "In fact, not only has participation of Black colleges been at a low level, but it has actually decreased since the institution of new guidelines."[11]

One point overlooked by these writers is that black schools may be hesitant to apply for LEEP funds. The majority of eligible black and Hispanic students are at the preservice level. The administrative cost of student processing could actually dissuade schools from applying. Because it is unlikely that nonminority police officers are interested in attending classes at predominantly black institutions, these institutions may not identify LEEP as relevant to them.

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The distribution of LEEP funds to colleges and universities has other limitations in addition to the exclusion of black institutions. Jacobs and Magdovitz aptly point out that LEEP schools may not be situated in areas that have the most need for police upgrading. After comparing LEEP expenditures in specific cities, they conclude that "areas in which there has been significant police misbehavior have been slighted . . . ."[12]

Criminal justice programs have suffered. Some schools saw LEEP money as an easy way to survive financial difficulties. These schools hurriedly pieced together a criminal justice curriculum in order to qualify for funding. Many courses were filled exclusively with LEEP students who were thus segregated from the rest of the student body. Some schools based their programs on the needs expressed by the students.

Goldstein notes that some of the programs are "narrowly oriented vocational training taught by part-time instructors who are either retired police officers or drawn from local police agencies."[13] This raises another issue worthy of discussion. In these cases, it seems that those responsible for instructing are very similar to those receiving the instruction. Indeed, it can even be argued that some retired police officers are very inappropriate agents to facilitate attitudinal change and ideological shift in police-minority relations. Instructors who are from the criminal justice system tend to reinforce stereotypical views and perpetuate trends that initially caused police departments problems. This discussion of LEAA's educational focus and of LEEP institutions indicates that the needs of the law enforcement community were of top priority, but not within minority communities.

In the midst of responding to law enforcement needs, two programs stand out as approaching minority concerns. One is Positive Futures, Inc. (PFI), which is a consortium of nine historically black colleges with the objective of establishing a bachelor's degree program in the field of criminal justice. At the time of their writing, Salas and Lewis noted that the PFI program had received $1,295,000 in LEAA funds.[14] Obviously, this is a step in the direction of responsiveness to minority needs. Yet, the PFI funds are almost negligible when compared with the more than $300 million LEAA has spent on education.

The enrollment of minorities in master's and doctoral criminal justice programs has been aided by an award of more than $700,000 to the School of Criminal Justice at the State University of New York at Albany for the expressed purpose of increasing minority enrollment. Again, another move was made in a needed direction. One question, however, begs to be answered: Why was this award given to a predominantly white institution? Is there an implicit message here that a minority institution is not capable of achieving the grant's objective? Yet, the concept and spirit of the grant, on the other hand, are to be commended.

a. Positive Futures, Inc. Because Positive Futures, Inc., represents a direct attempt to educate minorities in the field of criminal justice, this program will be discussed here in greater detail. The origin, implementation, and evaluation of the program provide additional insight into how the criminal justice educational needs of minorities can be more effectively met through government-supported intervention.

Positive Futures, Inc., was funded by LEAA's Office of Criminal Justice Education and Training under Title I of the Omnibus Crime Control Act of 1973. From 1975 to 1978, PFI received approximately $1.3 million to pursue at least a dozen educational objectives. The major goals were to raise minority criminal justice employment and to implement criminal justice baccalaureate programs at nine black colleges and universities. Among the educational objectives cited for goal attainment were:

(1) adding at least one new faculty at each of the nine institutions;

(2) planning and carrying out workshops;

(3) encouraging each program to undertake an extensive research activity;

(4) recruiting at least 100 students in each of the nine programs;

(5) encouraging PFI faculty to pursue advanced graduate work;

(6) encouraging PFI students to enter graduate criminal justice programs; and

(7) evaluating PFI efforts.

While some of PFI's objectives were ambitious and, perhaps, unrealistic, they do specifically address areas that demand attention if minority representation in criminal justice-related occupations is to be increased. The existence of criminal justice programs on minority campuses is essential for the recruitment of minorities in this field. The location of programs at these institutions legitimizes criminal justice education to the minority community and, thus, becomes a viable option for students making career choices. In addition, students' attention can be directed to criminal justice as it would be listed among the other specializations.

PFI recognized the need for its faculty to have advanced graduate training in criminal justice. The credentials of the administrative and teaching staff of the program can often influence the assessment of students by potential employers and admissions committees of graduate programs. Student learning is also greatly enhanced by faculty who possess knowledge and who reflect competence in their teaching area.

Despite some shortcomings, the PFI programs achieved commendable results. Criminal justice programs evolved, minority students were recruited, new faculty were hired, and faculty development was facilitated. With a little over a million dollars, PFI was able to do for minorities what all the millions of dollars in other programs were unable to accomplish. These results suggest that the PFI approach was on-target and that its concentration on minority institutions was essential to the project's success. The development of criminal justice programs at black institutions is definitely a major step toward the institutionalization of the criminal justice field in minority communities.

Generally, the goals and objectives of PFI captured the major needs of minorities and sought to crystallize a mechanism for overcoming financial and structural problems. Rather than concentrating exclusively on one institution, PFI developed the consortium approach, which provided assistance to several schools. Ironically, herein may lie the major weakness of the PFI concept.

The nine schools varied in organizational design, hierarchical structure, financial base, enrollment, faculty size, and resources. Yet the goals and objectives were consistent for all nine schools. Strategies for implementing the objectives may have had to vary from school to school, which necessitated some modification. As a matter of fact, the timetable and even some of the objectives may have required alteration for some of the schools. This observation is supported by an outside evaluator of the program (Ramseur Associates, Inc.,[15] who noted that the complexity of the institutional variables affected the effectiveness of the efforts.

Weiss observed that every program takes place in a social setting, which has some rather specific consequences for goal achievement.[16] While each of the nine criminal justice programs were united under the central PFI project, each program represented a unique one different from the others. The social context of each school differed, causing the school/social context of the criminal justice program interaction to yield variations across programs. An outside evaluator noted that the developmental activities at the schools were less than even. Varying social contexts could account for this unevenness.

An example of school variations can be found in student enrollment. About 851 students participated in the PFI programs. Enrollment varied, however, from 25 at a small, private institution to 200 at a state institution. The goal of at least 100 students in each program may not have adequately taken into consideration the social context of each school. For a smaller, privately funded facility, a more realistic goal may have called for fewer students. At a larger, publicly funded school, a larger number may have been more appropriate.

The implementation of quality criminal justice programs takes much time, energy, and resourcefulness. Each school's social context has to be carefully examined because its size, structure, funding base, and political environment are crucial factors in determining the success of the program. PFI may not have had sufficient funding to deal with each school as a special case study.

The goal of research being undertaken by faculty in each program was apparently unrealistic because no major research activities were begun. This goal in itself is large enough to command its own grant. The financial support needed to conduct research can be sizable. In addition, other faculty may be needed because it may not be feasible for instructors to continue with teaching activities while also engaging in major research. It must not be overlooked that black colleges and universities are primarily teaching institutions with little support or facilities for conducting research.

These observations indicate that PFI needed much more financial support to achieve all of its goals. Because the implementation of each objective may have required long-term, long-range planning, financial support would have been needed over this time period. Educational programs do not become sound overnight or even within a year. The development of any program needs dependable financial commitment in order to survive the numerous obstacles facing it. The federal government must be willing to make such a commitment if criminal justice programs are going to be institutionalized on black campuses.

b. The SUNY Program. The other program which stands out in terms of minority concerns is the State University of

New York (SUNY) Program. From 1975 to 1979, the State University of New York at Albany received $795,710 from LEAA's Office of Criminal Justice Education and Training (OCJET) to provide graduate education in criminal justice to minorities. Objectives of the program included:

(1) recruitment of minorities into an M.A. program;

(2) development of model programs for use with minorities;

(3) recruitment of minority college instructors into a college instructor training program;

(4) development of linkages between SUNY and minority institutions;

(5) issuance of monographs relevant to minorities; and

(6) evaluation of the project.

This program will be discussed because of its relevance to minority education in criminal justice.

No Ph.D. program in criminal justice exists at a minority institution, and only two or three have a master's program. Consequently, minorities seeking advanced education in criminal justice must do so at predominantly white institutions.

Several options exist for providing advanced education opportunities for minorities in criminal justice. First, federal support can be used to plan and develop graduate programs on minority campuses. Second, this same federal support can be devoted to enlisting the efforts of nonminority institutions in the training of minorities. Certainly, the SUNY program reflects the latter alternative.

The graduate student recruitment aspect of SUNY's project is important to highlight because of the implications it holds for other institutions wishing to recruit minorities in criminal justice programs. SUNY's recruitment efforts consisted of personal contacts, advertising, and direct mail. Minority college instructors, associate professors, project advisory board members, and consultants were asked to provide the names of potential applicants. Advertisements were placed in newsletters and in other print media. Fliers were mailed to directors of black studies programs, traditionally black colleges and universities, and other colleges and universities across the country. In addition to these activities, project members made recruitment trips in search of potential applicants.

From 1977 to 1979, these efforts resulted in a total of 137 minority applications. From these applications, 32 individuals were selected to attend summer and fall sessions. Intense recruitment activities can be useful in attracting minorities to graduate programs in criminal justice. These activities require a funding base and the sincere interest of those persons directing the programs.

While the recruitment activities were successful, the experience of the college instructors program shows the pitfalls of locating a program for minorities on a predominantly white campus. In a letter of November 27, 1978, from Donald Newman, project director, to J. Price Fisher of OCJET, the following excerpt is drawn:

> . . . out of twenty instructors who participated in the program . . . only about half contributed significantly to the production of courses or bibliographies. The rest appeared either confused about the purpose of the program, unfamiliar with courses and literature, or hostile to the whole idea of the project . . . . To some, our activities were unfamiliar turf and they saw primary problems in criminal justice . . . to be of a different nature and more pressing than the refinement of undergraduate curriculum.[17]

Mr. Newman attributed many of these problems to a lack of success in the selection of the college instructors. Obviously, he felt that the "wrong" people were selected for participation in the college instructors program. He also mentioned that many of the college instructors were from impoverished programs, had heavy teaching loads, and had little time for the creation of new courses.

Another causal factor is completely overlooked in this letter. Minority instructors may have ideological positions that differ markedly from those of white instructors. Minority instructors may view the social correlates of criminal behavior in a way that poses a threat or challenge to traditionally held views. It is not difficult to understand that some of the minority instructors may have interpreted the program as an attempt to indoctrinate minorities in teachings that were unacceptable to them. Regardless of how the participants are oriented, ideological gaps are still likely to surface. Minority perspectives often differ from those of the majority. Any majority program committed to educating minorities must face this potential conflict. Schisms of this nature can be minimized by the presence of minorities in key project positions, the careful recruitment of project teaching staff, and carefully planned seminars in which such topics are openly discussed.

Mr. Newman's comments do not recognize the role of the host university in having contributed to the problems with the college instructors program. Responsibility and blame are placed on the minority college instructors. Yet teaching materials, teaching practices, and teachers themselves may inadvertently perpetuate ideas, philosophies, and beliefs that often alienate minorities. Views touted as truths may, at best, be suppositions that support a specific value base. All aspects of the minority-majority interaction must be carefully and critically dissected if majority institutions are going to be effective in educating minorities in criminal justice.

The current educational needs of minorities are great enough to warrant intervention at several points. There is no one solution to meeting the criminal justice educational needs of a large segment of the population. Certainly, the funding of the SUNY project represents but one small step in the right direction. Numerous other steps are seriously needed to bring minorities into the mainstream of criminal justice employment. Multiple activities at numerous schools across the country must be undertaken to provide competant criminal justice personnel.

2. Minority Needs and Education

Minorities are underrepresented in all parts of the criminal justice system. Law enforcement agencies, courts, and corrections do not have significant numbers of minorities in key decision-making positions. This would suggest that the recruitment of minorities into fields of criminal justice needs to be of paramount concern. In the realm of education, preservice education programs are more relevant for minorities than are in-service programs.

LEAA's focus on the in-service training of law enforcement personnel has worked to the detriment of minorities. Minorities aspiring to a career in criminal justice often require financial assistance to complete their education. The administrative cost of processing preservice students and the lack of minority representation among participating institutions have led to a systematic exclusion of minorities from criminal justice education. While millions of dollars have been expended annually on the education of criminal justice employees, minorities have suffered at the hands of yet another form of institutional racism. Policies, procedures, and other methods of administering educational monies have perpetuated a pattern in which minorities, intentionally or unintentionally, have been overlooked.

In addition to the allocation of funds to in-service students, the underrepresentation of minority schools among funds recipients warrants additional comments. Wyrick and Owens echo a well-known fact when they write, ". . . established criminal justice programs on white campuses have not been very visible to many black students."[18] The participation of more minorities in criminal justice preservice education programs can be increased in several ways. Nonminority schools can engage in the active recruitment of minorities. Admissions officers may sit comfortably back and simply wait for minority applications. Others may place notices in newspapers that end with the words "We are an Equal Opportunity Institution" and feel that this is sufficient. When the minority applications do not flood the office, a typical response may be, "Well, I guess minorities just aren't interested in criminal justice careers." This benign neglect contributes to the underrepresentation of minorities in criminal justice programs at predominantly white institutions. If LEAA requires its fund recipients to have a certain percentage of minority enrollment in order to receive federal dollars for criminal justice education, the resulting active recruitment of minorities is almost certain.

Recruitment activities and strategies can take on numerous forms. Faculty members at predominantly black institutions could be a potential pool for criminal justice programs at graduate schools. Letters and program information could be sent directly to these individuals. Even if some already have graduate degrees, the criminal justice program may still attract them. Emphasis should be placed on recruiting those minority faculty without advanced degrees currently teaching in criminal justice programs at predominantly black institutions. This effort would be aimed at enhancing the quality of these programs at minority institutions by upgrading the educational level of the faculty.

Local groups and organizations may be useful for the recruitment of minorities into criminal justice programs. Across the country, groups have formed in minority communities to explore alternatives to corrections and to provide support services to ex-offenders. These groups may be able to launch recruitment efforts that are successful. Group members themselves may be interested in a criminal justice career. They may come in contact with other people who are good candidates for program enrollment. The point is that local groups represent a wealth of resources that may be directed toward recruitment activities.

Another way in which the participation of minority students in criminal justice programs can be increased is through greater LEAA concentration on minority institutions. Other activities similar to those of Positive Futures, Inc., could be explored and tested. Salas and Lewis note that black colleges enroll over 40 percent of all black students, and represent 70 percent of the bachelor's degrees received by black graduates.[19] A direct focus on the development and expansion of criminal justice programs at predominantly minority institutions is one concrete avenue for the increased participation of minorities in such programs.

Funds could be awarded directly to predominantly minority institutions for program building purposes. Undoubtedly, some institutions may require assistance in their administration of funds and in their program development. Educational specialists in criminal justice could be provided by LEAA on a one or two year basis. This area is much too crucial for federal administrators to dismiss totally some minority institutions because these institutions appear "unable" to handle grants or program development. These disadvantages can be overcome with skilled assistance and direction which could be funded by LEAA. From the few minority criminal justice specialists in existence, some individuals may be interested in assisting minority institutions. From the many non-minority criminal justice specialists, some individuals may also be recruited to assist these institutions. Other minority institutions require only monetary assistance in building criminal justice programs.

Minority judges and lawyers are underrepresented in courts around the nation. Minority representation in these areas help minority group members to establish some trust in the judicial process. LEAA, in expanding its educational focus, should not exclude funding to educate minority persons aspiring to be attorneys.

Local groups and organizations may also be able to assist in the criminal justice education of minorities. Groups organized around crime prevention, ex-offender services, and related areas could develop programs that call for conferences, workshops, seminars, and mini-courses directed toward community education. In this manner, more minorities are exposed to the area of criminal justice, alerted to issues, involved in proposing solutions, and made aware of career options in criminal justice. Indigenous groups may be more effective in educating communities than government agencies. These groups could be funded through LEAA or other federal agencies for the planning and implementing of community-based educational programs.

While there are numerous other issues that surface when criminal justice education is highlighted, this discussion will end here. The areas covered represent priority areas that command attention. If the federal government is to become responsive to its minority citizens, then the disadvantages of LEAA's educational activities must be addressed.

C. Research

This discussion primarily centers around research issues related to the utilization, education, training, and employment needs of minorities in criminal justice.

1. Varying Research Perspectives

From 1969 to 1975, the National Institute of Law Enforcement and Criminal Justice (NILECJ) expended approximately $152 million on research. The Institute's objectives included the facilitating criminal justice research, evaluating law enforcement and research programs, and developing and disseminating criminal justice information. While this is not the most current total spent by LEAA's research unit, it is, nonetheless, presented to provide the reader with an indication of LEAA's investment in research. At this writing, NILECJ has undergone some major organizational changes that have affected its funding, its hierarchical positioning within the Department of Justice, and its relationship to LEAA. Regardless of these changes, the federal government still continues to be the major source of funding for criminal justice research.

It is not the intent of this section to review all the research efforts of LEAA to determine their relevance, or lack thereof, to minority communities. Rather, this discussion is focused on the special interest nature of government-sponsored research.

Bell comments, ". . . much research in corrections and other components of the criminal justice system have been agency determined' and subordinated to various institutional interests."[20] He asserts that researchers have been urged "to formulate research which is politically acceptable to established agencies." And finally, Bell maintains that research grants are usually awarded to those willing to work in the interest of the state and its institutions. These observations lend support to Barnett's assertion that criminal justice researchers continue to be funded to study issues that are nonthreatening to criminal justice practitioners and administrators.[21]

Generally, the research issues of concern to minorities tend to questioning of criminal justice systems. While majority researchers may view criminal behavior as a social problem and not in terms of how the law is enforced, minority researchers may view criminal behavior in terms of the structures and institutions that shape minority life. Consequently, research topics of interest to minorities may challenge existing paradigms and institutions. This would suggest that the research sponsors may not have favorable regard for minority researchers.

Another barrier to the involvement of minority researchers in federally-sponsored studies is the assumption that minorities are too sensitive and subjective in cases related to other minorities. This assumption presupposes the existence of value-free, objective research. Needless to say, the existence of value-free research has been emphatically challenged by numerous scholars. Rhodes notes that "the determination of what data to collect, what they are to measure, and for what objectives requires a value judgment and reflection on the nature of the problem."[22] He adds that the group which commissions a study greatly defines the nature of the problem to be studied. Hence, the myth of value-free research has worked against minority involvement in criminal justice and research.

The process of commissioning research may also inadvertently exclude minority involvement, both as agency staff members and as respondents to Requests for Proposals (RFPs). In the first instance, minorities are excluded as decision makers, including the federal levels. Consequently, nonminorities are generally composing RFPs and disbursing research dollars. Because this process is often void of minority input, issues identified for research may not address the concerns of minority communities. According to Edelhertz, the commissioning of a problem solution via RFP "often means that the problem has gone through an administrative 'massaging' which can distort the staff articulation of its needs."[23]

Administrative massaging can have several consequences. The problem definition may be counter to the definition held by the minority researcher. There is also a greater probability that the issue is posed in a manner that is nonthreatening to other criminal justice agencies. Issues related to the criminal justice education and training needs of criminal justice occupations are research topics that concern and affect minorities. The administrative process may lead to the identification of these areas as high priority.

In responding to RFPs, minorities are also at a disadvantage. Monies may be awarded to those individuals or groups with extensive research backgrounds and experience with handling large grants. Because many minority researchers may not have this background or experience, they may be overlooked as competent researchers. They may be situated at a college or university that is relatively unknown to the decision makers. Clearly, the commitment of funds to the training and education of minorities in criminal justice could help alleviate some of these concerns. In addition, the federal government's active participation in the education of minorities would ensure greater staff familiarity with minority researchers and minority institutions. This familiarity could be a factor in overcoming prejudgments about the capabilities of minority researchers.

Dembo emphasizes that criminal justice research based on the acceptance of an orderly universe is not capable of illuminating weaknesses in the criminal justice system and providing guidelines to devise a system that is more humane.[24]

Minorities have been engaging in criminal justice research despite the obstacles presented. Many have had their findings "neutralized" by challenges to the relevance of the results, merit of their research, and challenges to their overall job performance. Valuable investigations have been overlooked because of the criticisms directed toward current criminal justice practices. Yet, new insight and progressive thinking are required to balance existing beliefs in the field. Bell observes that research problem formulation by blacks trained in criminal justice "may avoid the biases within the criminal justice system."[25]

Minority researchers have made and can continue to make valuable contributions in the area of criminal justice. These contributions should be recognized and utilized by LEAA as well as funded by this federal agency. Minorities are resources that have been underutilized at all points in the criminal justice system.

2. NILECJ Minority Research Workshops

Generally, the underutilization of minority researchers by LEAA cannot be disputed. NILECJ recognized this underutilization and attempted to make significant changes. These efforts and results will be reported in the hope that implications for future activity can be drawn.

On March 23-24, 1978, NILECJ held a minority research program workshop to bring individuals together to focus on issues related to minorities and crime and criminal justice. Minority criminal justice researchers and practitioners from around the country participated in the workshop. NILECJ staff planned, organized, and conducted the workshop.

First of all, this workshop was a beginning in the recognition of minority input in the establishment of research priorities. It served to help establish a minority network in criminal justice. These criminal justice experts had an opportunity to critique NILECJ activities as they affected minorities. Consequently, the workshop idea proved to be a useful one and can be utilized by other agencies.

Seven priority research areas emerged from the 1978 workshop:

(a) community studies examining the effects of the larger community on the minority community;

(b) police use of deadly force;

(c) arrest procedures;

(d) unemployment in the minority community;

(e) verification studies;

(f) the school system and its relation to the criminal justice system; and

(g) corrections and the post-release supportive environment.

While these priority areas represent the bulk of the workshop's activity, several other discussions deserve to be mentioned here. Several participants spoke of a minority perspective in the study of criminal justice. Many others view crime as an individual or culturally specific phenomenon. The minority perspective sees it in structuralistic terms with the larger society contributing to the behavioral patterns of minorities.

Much discussion of the minority perspective took place at that workshop. The intent here is not to reproduce the discussions nor to provide a detailed overview of the definition of the minority perspective. Rather, those discussions of the minority research workshop members show that issues of primary concern to minorities may not be so defined by the majority.

The employment patterns of minorities in criminal justice are of particular interest to minorities. This area is in need of serious study. Because systematic data are lacking, this area has obviously not been of sufficient importance to LEAA or other criminal justice agencies. Consequently, the minority perspective may be important in explaining the absence of attention on areas that depict minority experience in criminal justice. The counterpart nonminority perspective may overlook, ignore, or simply dismiss these areas.

Another concern of the workshop participants was, "Who will do this research which impacts on minorities?" Many felt that minority researchers should be utilized more by LEAA. It was noted that speculative or biased interpretations were possible in cases of majority researchers conducting studies having an impact on minorities. For this reason, studies of the employment patterns and educational needs of minorities in criminal justice should involve minority researchers. Credible interpretations are likely to result when the researcher is sensitive to and aware of the values, culture, and structurally induced problems of the group being investigated.

Many of the observations and recommendations of this chapter blend well with those made at the first minority research workshop. A consensus of opinion is apparent. Specific types of research are needed and these studies should be conducted by minority researchers. The implementation of needed educational programs for minorities in criminal justice (discussed earlier in this chapter) can ensure the presence of minority researchers capable of undertaking these tasks. These individuals can increase the number of competent minority researchers.

3. Consequences of the Minority Research Workshops

The 1978 and 1979 workshops were instrumental in forming the basis of several LEAA research solicitations:

(a) "Research on Minority Communities: Toward an Understanding of the Relationship Between Race and Crime";

(b) "Use of Deadly Force by Police Officers"; and

(c) "Center for the Study of Race, Crime, and Social Policy."

Workshop participants noted that numerous studies have been undertaken on minorities and criminal justice. Many studies were, no doubt, filed away and forgotten. Other studies were very popular and included in just about every bibliography on minorities and criminal justice. Many of these studies were never replicated while other studies were repeated numerous times. Participants stressed that some assessment of the state of the art on minorities and criminal justice was needed.

As a result of the concerns expressed at the 1978 workshop, the National Urban League's research department received a grant for, "An Assessment of Research on Minorities and Crime and the Administration of Justice." According to the proposal submitted to NILECJ, the National Urban League (NUL) sought to:

(a) develop a comprehensive annotated bibliography on research on minorities and crime and the administration of justice;

(b) identify promising perspectives on minorities and crime and the administration of justice and research questions and issues that need to be examined;

(c) commission policy research papers on issues, needs and concerns of minorities and crime and the administration of justice; and

(d) recommend ways in which minority participation in research and policy development could be encouraged and supported.

The Urban League recognized that minority researchers often encounter indifference when they attempt to validate their minority perspective. Criminal justice practitioners often fail to accept the insights that minorities can lend in the area of criminal justice research. The Urban League wanted to incorporate the minority perspective in the papers commissioned and to synthesize the literature on minorities and criminal justice.

The NUL project stands out as a minority research endeavor with tremendous potential for use in criminal justice educational programs. The promising perspectives could stimulate course development and curriculum expansion. Nonminority programs could make the NUL reports available to their faculty to expose them to minority perspectives. Minority and majority students and faculty could have a comprehensive overview of the literature and of emerging views on minorities and criminal justice.

As a result of the comprehensive bibliography, LEAA could identify other research areas. LEAA could use the bibliography to help determine the allocation of research dollars. The commissioned papers could raise questions about existing research topics and methodologies. These questions could serve to direct future efforts.

The recommendations further suggest that minority researchers have valuable contributions to make. They also indicate that minority participation in criminal justice research needs to be encouraged and increased.

Consequently, the NUL project can make meaningful contributions to both education and research as they relate to minorities in criminal justice. More important, the study results can help direct future research efforts to areas that are deserving of more interest from the wider academic community.

4. Utilization of Minorities

Minority researchers are needed to study a variety of topics. Certainly much study of the employment patterns of minorities working in criminal justice is needed. Accurate, systematic data are needed on these minorities. To what extent and how are minorities encountering problems exacerbated by racial tension? Are personnel standards differentially applied because of race? In which jobs are minorities likely to be concentrated? Why? Just how many minorities are currently employed in criminal justice?

The issue of LEAA's lack of involvement in the educational preparation of minorities for criminal justice careers could also be investigated by minority researchers. How many minority colleges and universities have received LEAA funding? How much LEAA funding has gone to these institutions? What is the number of minority faculty currently teaching in criminal justice programs?

Nonminority researchers may not be interested in these topics. They may have other premises related to the underrepresentation of minorities in criminal justice occupations. LEAA may perceive these areas as threatening to criminal justice occupations. These questions have to be investigated so that policies and programs can be implemented to boost minority employment in criminal justice. Minority researchers could be used for these investigations.

A greater sensitivity to the needs of minorities, coupled with sound training in research can make the minority researcher more than capable of studying the effects of the criminal justice system on minorities. The questions posed by minority investigators may complement or counter nonminority questions. Because of the enormity of the problem, no view or approach can be ignored. It is evident that the questions outnumber the answers. Minority researchers may uncover new data or reinterpret old data to help describe, explain, and counter the effects of the criminal justice system on minority communities.

Minority criminal justice specialists could be more effectively utilized by the federal government. Their studies, papers, and expert testimony could be vital to a greater understanding of the relationship between the criminal justice system and minorities. Indeed, their writings and statements may be critical of the system and of the federal government's role in perpetuating, through benign neglect, trends that have penalized minorities unfairly. The minority perspective is needed to facilitate change in federal programs, federal funding, and the criminal justice system in general. Receptivity to minority research can be heightened through LEAA's acceptance of the key role of minority researchers in the search for solutions to the problems encountered by criminal justice systems. LEAA's acceptance can be reflected in its publications of minority research and in its use of minority researchers. The federal government can be a leader in this area and influence agencies throughout the country.

D. Notes on Implementing the Recommendations

The education and research recommendations can be implemented through the use of a variety of strategies. Rather than merely present recommendations, this section will now touch on the identification of some specific ways of implementing the recommendations.

Efforts similar to those of Positive Futures, Inc., are useful for the development of criminal justice programs at black colleges and universities. Minority organizations can be instrumental in facilitating this program development. The federal government can provide an appropriate funding base for curriculum development, and each minority school could be approached on a case study basis. The specific needs of each school have to be appropriately assessed. Realistic time frames must also be determined. Planning and development require the resources necessary to support all of these activities. Because over 800 students participated in the PFI programs, a focus on criminal justice program building at black institutions appears to be an appropriate avenue for attracting minorities to criminal justice careers.

The intense recruitment activities of the SUNY program yielded 137 minority applications for the graduate criminal justice programs. Nonminority colleges and universities must engage in recruitment in order to attract minorities. Recruitment trips, advertising fliers, and the use of personal networks can produce a pool of minority applicants. Schools must first be motivated to engage in these activities. The federal government, through LEAA or a similar agency, can provide fellowships earmarked for minorities. Training grants can designate a certain percentage of money exclusively for minority use. Incentives such as these are needed to motivate schools to seek minority students.

After minorities are recruited to nonminority criminal justice programs, the programs must respond to the needs and interests of the students, in order that students complete the programs. Minority criminal justice consultants can be used to help expand or modify existing programs. Workshops can be conducted that focus on minority-related issues. Minority guest lecturers could be invited to address students and faculty. Minority faculty can be recruited to teach in the programs. Minority research in criminal justice can be used for course development. These activities not only respond to the needs of minority students; they also serve to further educate and sensitize nonminorities to the significant contributions of minorities in criminal justice.

Curriculum development and expansion also require a sound funding base. Federal funding can provide this needed base. Again, predominantly white institutions must be motivated to engage in this curriculum modification. A minority course content requirement can be one way of affecting the desired course changes. Schools applying for training grants could be required to attach a plan for the incorporation of material in the curriculum relevant to minorities in order to qualify for these grants. The plan could address the ways in which minority material will be utilized and a timetable for implementation.

E. Research Needs

It is surprising that, in this age of computer technology and burgeoning information systems, data on minorities employed in criminal justice are not systematically kept or reported. The federal government has, no doubt, set records in amassing statistics and publishing reports of these types of statistics. The information systems already in use could be called upon to generate information on minorities employed in criminal justice. Police departments, unions and voluntary organizations may have useful data, and the same may be true for the field of corrections. At each particular employment level in criminal justice, some agency, organization, or association may have information on the number and positions of minorities in their ranks. This information needs to be accumulated and reported in one major source.

LEAA, or a similar body, could issue an annual report on minorities employed in criminal justice. The report could show all aspects of the criminal justice employment structures and the numbers of minorities in each structure. Aggregated data could first be presented and then data on each state could be reported. In one source, the number of minority correctional officers in the country and in a particular state could be found. Additional data on the sex, age, and years in present positions could also be included.

The mechanisms for collecting and reporting these data are already in place. All that is lacking is the staff time needed to compile the data. In some cases, additional variables may have to be added especially in cases where Hispanics are not delineated from Anglo-Americans. The government is well-versed in the art and science of data collection despite some outdated methods and techniques with regard to minority populations. This experience could be used to pinpoint where more intense minority recruitment efforts are needed and to locate the agencies that require governmental intervention to achieve respectable levels of minority representation.

The second research recommendation lists several areas requiring research and analysis. These areas could be designated top priority and organized in one or more research solicitations. Because the traditional funding process often works to the disadvantage of minorities, minority individuals and groups could be given first opportunity to respond to the solicitations. Such preferential treatment is needed to overcome inequities that are now institutionalized.

The third research recommedation also calls for the use of minority researchers in the study of the effects of the criminal justice system on minorities. Solicitations could be designated for minority researchers. In this manner, the expertise and contributions of minority researchers are recognized. The minority perspective can provide knowledge and program implications not found in existing research. The federal government must serve as an example in the utilization of minority researchers.

Some individuals may question the use of preferential treatment of minorities. Affirmative action has been widely misinterpreted. It also involves numerous activities that may not yield any noticeable change as far as minorities are concerned.

Seligman offers four different postures that often result in situations involving affirmative action. One of the postures seems to reflect LEAA's approach to awarding research grants. Efforts are often made to expand the pool of proposal applicants so that no group or individual is excluded because of past or present inequities. At the point of decision, however, the decision makers may close their eyes to race and accept the "most qualified" proposal. This open competition process often does not increase the utilization of minority researchers. The conclusion most frequently reached by decision makers is that the "most qualified" proposals are not submitted by minorities.

The definition of "most qualified" may have little to do with research skills and abilities. Existing assumptions may inherently contain biases that prejudge the minority applicant's expertise. Hence, a minority proposal may be devalued regardless of the qualifications of the minority submitting it. The minority approach to the research problem may vary from that of other researchers. As noted earlier, the minority perspective may be viewed as inappropriate.

These and other reasons indicate that affirmative action has to take place at the grant-awarding stage and not just at the proposal solicitation stage. According to Kellig,[26] "If those who are now the victims of our negative discrimination are to enjoy the full benefits of our social system, they, too, will have to go through a period, as did the currently favored groups, of positive discrimination." Minority researchers can be employed to conduct research in all of the areas identified in the research recommendations, including the evaluation of the Office of Criminal Justice and Training's contribution to minority criminal justice education.

LEAA, or a similar body, can sponsor seminars, conferences, workshops, and publications that involve minority criminal justice experts and focus on topics relevant to minority groups. NILECJ minority research workshops are examples of the role minorities can play in identifying priority research areas. The federal government can be a leader in disseminating minority contributions to a wider audience.

Other state and local agencies could be funded to sponsor workshops and conferences that focus on minority relevant topics and on the use of minority criminal justice experts. Specific areas may include some particular concerns relative to minorities and the criminal justice system. A workshop or conference could provide needed information and program implications.

All of the suggested strategies are designed to help overcome the underutilization of minorities in the criminal justice system. The suggestions in no way reflect all that can be done. They are offered to show some direction for reversing longstanding trends. Multiple efforts and activities are needed. Federal commitment is essential. Actionoriented intervention must be undertaken to bring minorities into positions of responsibility and leadership in the field of criminal justice.

F. Conclusion

This chapter has focused on the education and research issues that relate to the utilization of minorities by the criminal justice system. Clearly, much needs to be done to make the criminal justice system more responsive to the educational and research needs of minority communities.

The federal government has been a dominant force in providing educational dollars and commissioning research. As a dominant force, it can facilitate minority involvement by reallocating educational funds to minorities aspiring to a criminal justice career. Research activities that address minority concerns can be funded by LEAA and undertaken by minority researchers.

The recommendations are based on the assumption that LEAA is committed to the employment of more minorities in the criminal justice system, and on the assumption that LEAA can validate minority research activities.

The National Minority Advisory Council holds strongly that minorities have significant contributions to make to the equitable administration of justice. Dominant views and policies may offer only partial solutions. Dominant studies may be suggestive and speculative at best. Minority input can offer additional insight that can facilitate system change where needed. Minority criminal justice practitioners and researchers can provide alternative views of the system that may be the impetus for system responsiveness to minority needs.

Recommendations are as effective as the efforts to implement them. For this reason, the Advisory Council does not want its time and energy expended without careful attempts to implement the recommendations. The federal government has a history of involvement in civil rights and affirmative action. It is only reasonable that the Council look to the federal government for continued commitment to the utilization of minorities in responsible criminal justice positions and in research activities. The Council affirms that the government's commitment to minorities will be strengthened through the distribution of educational funds to minority institutions and the commission of research efforts to study minority criminal justice employment patterns.

As a federal agency, LEAA and any such similar body has a responsibility to respond to minority needs through its awarding of grants to state and local governments. The benefits of providing services, resources, and supports to all minorities far outweigh the costs and are more advantageous than the continued practice of scholarly discrimination.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Law Enforcement Assistance Administration, Washington, D.C., September 1979.

2. Jon Miller and Lincoln Fry. "Reexamining Assumptions About Education and Professionalism in Law Enforcement." *Journal of Police Science and Administration*, 4: 187-196 (June 1976).

3. Law Enforcement Assistance Administration, *Summary Report*, Volume 1, The National Manpower Survey of the Criminal Justice System (Washington, D.C.: Government Printing Office, 1978a).

   Idem, *Corrections*, Volume 3 (Washington, D.C.: Government Printing Office, 1978b).

   Law Enforcement Assistance Administration. *Two Hundred Years of American Criminal Justice*. Washington, D.C.: Government Printing Office, 1976.

4. James B. Jacobs and Samuel B. Magdovitz, "At LEEPs End? A Review of the Law Enforcement Education Program." *Journal of Police Science and Administration* 5: 1-18 (March 1977).

5. Luis P. Salas and Ralph G. Lewis, "The Law Enforcement Assistance Administration and Minority Communities." *Journal of Police Science and Administration*, 7: 379-399 (December 1979).

6. *The President's Commission on Law Enforcement and the Administration of Justice*, Task Force Report (Washington, D.C.: Government Printing Office, 1967).

7. Jacobs and Magdovitz, op. cit.

8. Ibid.

9. Rita Kelly and Gorman West, Jr., "The Racial Transition of a Police Force: A Profile of White and Black Policemen in Washington, D.C." In John R. Snibbe and Homa M. Snibbe, eds., *The Urban Policeman in Transition* (Springfield: Charles C. Thomas, 1973).

10. Nicholas Alex, *Black in Blue* (New York: Appleton-Century-Crofts, 1969).

11. Salas and Lewis, op. cit.

12. Jacobs and Magodvitz, op. cit.

13. Herman Goldstein, *Policing a Free Society* (Cambridge, Mass.: Ballinger [J.B. Lippincott Subsidiary], 1977).

14. Salas and Lewis, op. cit.

15. Ramseur Associates, Inc., Evaluation of Criminal Justice Project Conducted by PFI, Law Enforcement Assistance Administration (1978).

16. Carol Weiss, *Evaluation Research* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1972).

17. Newman to Fisher, November 27, 1978.

18. Eleanor Saunders Wyrick and Otis H. Owens, "Black Women: Income and Incarceration." In Charles E. Owens and Jimmy Bell, eds., *Blacks and Criminal Justice* (Lexington: Lexington Books, 1977).

19. Op. cit., footnote no. 4.

20. Jimmy Bell. Higher Education. "Roles in Criminal Justice." In Charles E. Owens and Jimmy Bell, eds., *Blacks and Criminal Justice* (Lexington: Lexington Books, 1977).

21. Samual Barnett. "Researching Black Justice. Descriptions and Implications." In Charles E. Owens and Jimmy Bell (eds.), *Blacks and Criminal Justice* (Lexington: Lexington Books, 1977).

22. Robert P. Rhodes. "Political Theory, Policy Analysis and the Insoluble Problems of Crime."

23. Herbert Edlehertz, "The Research Process as a Factor in Implementation of Design for Criminal Justice Change." In *The Change Process in Criminal Justice* (Washington, D.C.: LEAA, 1973).

24. Richard Dembo, "Issues Facing the Criminology Researcher Working in the Criminal Justice System." In Nicholas N. Kettrie and Jackwell Susman, eds., *Legality, Morality, and Ethics in Criminal Justice* (New York: Praeger Publishers, 1979).

25. Bell, op. cit.

26. George Kellig, "Poverty, Problems, Programs, and Proposals." *Child Welfare*, 50: 18-24 (January 1971).

CHAPTER IX

THE INEQUALITY OF JUSTICE: COMMUNITY ANTI-CRIME

> So I think we have to discard from the beginning the notion that law enforcement can even begin to control crime. It simply increases it. I think the real control of crime rests with the social institutions of this country, the educational system, the justice system, the economic structure. These are the real controlling forces in our society that can have a significant positive impact in diminishing crime.[1]

> Crime is unbelievable, I am supposed to be living in an affluent community, but still, crime is rampant there. On a relative basis I think crime is bad anytime people have the basic fear of going out in the streets, fear of staying at home, fear of someone coming in and physically assaulting you. That is the general criteria that I would give to "bad crime problems."[2]

A. Introduction

Crime is no stranger in minority communities nor is injustice at the hands of the criminal justice system's personnel. Crime across the nation soared between the middle of the sixties and the seventies and continues to increase at the beginning of the eighties. The perception of increased crime has created substantial public concern and constant fear. Since 1965, the issue and the effect of crime have been the frequent subject of Sunday sermons and front page news stories as well as one of the catalysts helping to unite people as a community against crime. Many lay persons as well as public officials believe that crime and its impact increasingly threaten the fundamental cultural characteristics which create and maintain the notion of community. But, at the same time, crime has stimulated a new relationship between the traditionally ignored minority community people and historically insensitive law enforcement personnel.

This chapter examines the federal government's response to local concerns regarding crime and public initiatives in crime prevention and citizen-based actions to prevent and reduce crime. The National Minority Advisory Council on Criminal Justice's definition of crime in this chapter reflects the same seven primary offenses as established by the FBI: assault, homicide, robbery, burglary, rape, auto theft, and larceny.

Extensive recent increases in reported crimes have captured the public's attention and concern. Cases of murder nearly doubled in the last 10 years from 12.2 per 1,000 in 1967, to 19.6 per 1,000 in 1978. Within the last decade, forcible rapes increased from 27.6 per 1,000 in 1967 to 67.1 per 1,000 in 1978--a threefold increase. Larceny doubled in this same period, from 3,112 per 100,000 in 1967 to 5,983 per 100,000 in 1978. A similarly sharp jump was also recorded for acts of burglary, which increased from 1,632 per 1,000 in 1967 to 3,104 per 1,000 in 1978. Reported robberies also doubled between 1967 and 1978 from 203 per 1,000 to 417 per 1,000.[3]

According to preliminary data compiled by the FBI for 1979, crime shows the sharpest increase since 1975. The FBI statistics indicate that crime increased 8 percent nationally from 1978 to 1979 but was slightly higher in smaller American cities, reaching 11 percent. Violent crimes nationally, however, were up 11 percent from 1978. Forcible rape and robberies each increased 12 percent, while murder and aggravated assaults each rose 9 percent. These latest figures indicating an increase in crime do not compare favorably with the percentage of increases reported for previous years. In 1978, crime rose 2 percent, while in 1977 crime decreased by 3 percent[4] as a result of partnership efforts between police departments and citizen groups, neighborhood crime prevention programs funded by the Law Enforcement Assistance Administration (LEAA) and efforts stimulated and supported by local community residents.

The Council has carefully examined this nation's system for administering justice and controlling crime. The Council reached the inevitable conclusion that the present system of criminal justice, alone, cannot effectively control nor prevent crime. This conclusion, that it is beyond the capability of the criminal justice system to control crime, stems from the clear recognition that ". . . crime is a natural consequence of the social, economic, and political system in which we live."[5] Thus, failures of social institutions to fulfill the needs and aspirations of all people result in crime. Indeed, unemployment, inadequate health care, ineffective schools, poor housing, poverty, discrimination, and racism are causative factors in criminal behavior. Therefore, the Council embraces the proposition that ". . . as long as there is unequal opportunity to achieve, there will always be crime."[6]

Policy-makers as well as criminal justice practitioners are beginning to acknowledge the fact that the criminal justice system's ability to control crime is greatly limited. Practical experience, if not empirical research, clearly points to inequities in social institutions as causative

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factors in criminal behavior. In support of this propostion, the Council notes that it is not an accident that the highest crime rates occur in areas that are characterized by substandard housing; poor service delivery; poor educational opportunities; high rates of mental and physical impairment, mortality, and unemployment; and drug and alcohol addiction.[7] If negative socioeconomic conditions produce crime, then the ability of the criminal justice system to control and prevent crime is directly related to its ability to control those factors that cause crime.

The traditional criminal justice system, by its very design, has had little, if any, impact on those factors which breed crime. In fact, the criminal justice practioners have historically assumed that social and economic problems are the concerns of the social and economic institutions and not the criminal justice system. As a result, with insufficient exceptions by the police, the criminal justice system has simply reacted to crime--involving itself only after a crime has been committed. Such a narrow view of its role has prevented the criminal justice system from being proactive. Thus the police arrest, the courts adjudicate, the corrections system incarcerates, and the result is that the real problems, that are the cause of crime are not addressed, thereby making responsible solutions even more difficult.

B. Background

The practice and idea of community crime prevention are not new. Throughout history, regardless of cultures, it has been acknowledged that citizens should be significantly involved in crime control efforts. Protection of the community's well being was the responsibility of each person. In fact, the National Advisory Commission on Criminal Justice Standards and Goals' publication entitled Community Crime Prevention appropriately places this issue in its proper perspective noting that, "crime prevention as each citizen's duty is not a new idea. In the early days of law enforcement, well over a thousand years ago, the peace keeping system encouraged the concept of mutual responsibility. Each citizen observing a crime had the duty to rouse his neighbors and pursue the criminal. Peace was kept, for the most part, not by officials but by the whole community."[8]

The idea of the people policing themselves changed over a period of time. Replacing this custom was the notion and practice that crime control was the responsibility of paid professionals. As evident by the ever-increasing crime increasing crime rates, using the police and other components of the criminal justice system as a means of controlling crime has not been successful. That the community has a role to play in crime control was probably best summed up by the philosophy adopted by the Atlanta, Georgia, Bureau of Police Services:

> Citizens have a personal and immediate stake in the control of crime. It is from their neighborhoods that the offender is spawned, often known to them as their friend, neighbor, or child. They know intimately what conditions in their neighborhoods perpetuate crime, and to some extent, how to best respond to them. It is they who most often must shoulder the full brunt of crime--from personal property losses to insult, injury, and even death to themselves, their families, and friends. That they respond with apathy, a sense of powerlessness, pathetic individuals attempt to isolate and protect themselves by hiding behind fortress-like homes and offices is to some extent a measure to which they have been excluded from active participation in crime control efforts. For when the rage and frustration about crime and the fear it generates is tapped, citizens become a tremendous and vital resource to police agencies and the key element for effecting crime prevention.[9]

Community anti-crime programs as perceived by the Council are preventive programs designed and operated by neighborhood people, which require some degree of personal responsiblity and effort to remove or remedy the causes of crime. Further, the Council maintains, based on its research, public testimonies, and field investigations, that community anti-crime programs increase citizen consciousness about crime and reduce the citizens' sense of passivity and isolation. Ultimately, such community efforts against crime increase cohesion among residents to achieve and sustain their anti-crime goals and community values. The Council maintains that the greatest aid to criminal justice agencies in their anti-crime programs is concerned citizens who participate in collective actions to protect their neighborhoods against crime while creating viable community alternatives to reduce crime and its causes.

The Council views community anti-crime programs as having several interrelated goals: increase community awareness and concern about crime; initiate citizen action to remove the causes of crime and its fear; and increase cooperation and support between the community and the police. Crime prevention activities sponsored by community organizations operate by using a variety of program methods and techniques, including anti-crime diversion tactics, anti- arson strategies, neighborhood patrols, and elderly escorts, among others.

1. The Federal Response

After years of continuous failure by the criminal justice system and increased public expenditures directed toward reducing crime nationally, Congress enacted the Omnibus Crime Control and Safe Streets Act of 1968, which created LEAA. Initially, citizen participation was not an element of this anti-crime legislation. A refreshing measure of progress was realized, however, in the Crime Control Act of 1973. It was at that time congressional legislation enabled the participation of citizens and community organizations on State Criminal Justice Planning Agencies (SPAs). Further, this legislation permitted citizens to review the records of these state planning agencies and directed that SPA meetings be open to the public. However, direct funding to community organizations to combat crime was not included in this legislation. This congressional act did, nevertheless, initiate a partnership between the government and community organizations in the battle against crime. Community anti-crime advocates asserted that the 1973 legislation would make state agencies more accountable in both their planning and operations. Congress acknowledged that the effectiveness of state agencies would also be improved by involving citizens and community groups.

In 1974, Congress took another step in the direction of citizen participation in crime control. The Juvenile Justice participation in crime control. The Juvenile Justice and Delinquency Prevention Act of 1974 included an amendment which stated that community agencies and persons involved in juvenile crime prevention and control be represented on SPAs.

Almost a decade after establishing LEAA, Congress enacted the Crime Control Act of 1976. This act was the legislative breakthrough that citizen advocates had fought for for years. The significant elements of this legislation ensured the direct participation of the public in the national fight against crime. Congressman Peter Rodino, chairman of the House Judiciary Committee, observed, "Planning units are mandated to make an active effort to recruit these representatives (churches, civil rights groups, and neighborhood organizations) so that non-professional concerned citizens can be heard just as are the most usual representatives of professional law enforcement personnel."[10] In addition, the new legislation authorized $15 million to create the Office of Community Anti-Crime designed to encourage citizen participation in combating crime. Under the legislation, community groups did not have to be endorsed or sanctioned by their local governments.

Commenting on the problem of increased crime and the exclusion of the citizen from the fight against crime, Congressman John Conyers, a vigorous supporter of community anti-crime efforts, observed:

> Until we involve citizens and communities and community organizations far more in the anti-crime fight, we are not ever going to be able to deal effectively with this situation. We have citizens who have been begging law enforcement agencies, and especially the police, to let them cooperate. I think that we must demystify not only law enforcement, but the entire legal system; not just the criminal justice system--the entire legal system in which we find ourselves . . . . But we must begin to show all citizens that they are partners . . . We have to make sure that everybody who wants to cooperate with law enforcement at any level has that opportunity.[11]

Hostility between the community and the police was also motivated, as Conyers warned, by the failure of law enforcement agencies to integrate their forces, to promote minorities to positions of administrative leadership, and to effect good community relations between the police and the citizens.

From a survey conducted by LEAA's Office of the General Counsel, which sought to determine the extent of compliance by SPAs regarding citizen involvement, the following facts were reported: (a) virutally all SPAs had citizens represented and SPA meetings were public; (b) 16 states reported special public meetings and hearings; (c) 8 states engaged in special outreach programs to public interest groups; (d) 5 states mailed materials to interested citizen organizations; (e) 2 states solicited the input periodically from community organizations; and (f) 4 states utilized special citizen task forces for nonprofessional citizen input.[12] Other activities the survey reported included public forums on issues of criminal justice and public appearances by SPA personnel at community activities and other types of special citizen activities. Congress' intent was being realized at the state level regarding citizen participation, but the degree of response by LEAA to the act's purpose was thwarted for almost two years by the agency itself.

Citizen participation, as the 1976 congressional legislation mandated, was not quickly implemented by LEAA. The agency's leadership was less than enthusiastic in accepting the congressional directive encouraging the participation of citizens. Quite clearly, community participation was not a priority among LEAA's leadership. Some congressional representatives, such as Conyers and Rodino, were strong advocates of swift implementation of this new program within LEAA and were aggressive in advancing its purpose. LEAA, though, was nonresponsive until the late seventies. Its slow implementation of the program reflected the traditional bias toward citizen participation often associated with professional law enforcement personnel.

The advantage of finally establishing the Office of Community Anti-Crime (OCAC) late in 1977 was twofold. The attack against crime was made more comprehensive once citizens began to participate and the government's support for community involvement increased. When LEAA in 1977 finally incorporated the citizen as a critical element in its anti-crime programs, $1.3 million was granted initially to support citizen anti-crime efforts. A decade after the establishment of LEAA, federal funds for local nonprofessional anti-crime efforts increased to $28.5 million and LEAA programs grew from 3 programs to nearly 150. According to LEAA's Office of Audit, from 1977 to 1980, 175 neighborhood crime prevention programs of various types and for different purposes were funded totaling $34.1 million.[13]

The impact of federal support to community anti-crime efforts is evident. Communities have been better able to address causes of crime because community groups have had the financial resources to support their neighborhood anti-crime efforts and to develop community alternatives to traditional law enforcement practices. The U.S. General Accounting Office noted the following regarding community anti-crime programs:

> The percentage of funds awarded directly to private, non-profit organizations for anti-crime activities was greater for fiscal year 1977 than for the other four years we reviewed: 1974, 1975, 1976, and 1978.[14]

Table IX-1

LEAA Block and Discretionary Funds to Private Organizations

Fiscal Year	Percentage of Block Funds	Percentage of Discretionary Funds
1974	1.9	0.8
1975	2.0	3.2
1976	2.8	5.3
1977	3.5	8.9
1978	2.4	21.9
Average	2.5	5.9

Source: U.S. General Accounting Office, April 1979 (Arkansas, Minnesota, Oregon, Vermont, West Virginia, and the District of Columbia are not included).

The GAO report also revealed that the percentage of LEAA's discretionary funds to private groups for 1978 was higher than the previous three years, although these increases were not solely out of OCAC funds. Specifically referring to OCAC support, the GAO review estimated that about $52 million in block category funds, nearly 2.5 percent of LEAA's total funds, had been awarded through the agency's various community anti-crime programs.[15]

By 1978, LEAA's support of citizen anti-crime efforts was in sharp contrast to its previous history. The agency not only increased its support to local anti-crime efforts, but it also changed its attitudes about such programs. Of the 138 grants reviewed by the GAO, the report concluded that 53 percent of the community anti-crime activities could be classified as consistent with the agency's guidelines, while 47 percent of these programs did not fully conform to the guidelines. LEAA had displayed a new willingness to fund anti-crime activities beyond its primary anti-crime guidelines. Community programs such as job placement, anti-arson efforts, distribution of crime prevention information, music education programs as diversions, and community anti-fraud activities, among others, were organized across the nation by citizens in their program efforts to prevent crime.

Through time and progress in this area, LEAA changed its attitudes regarding citizen participation in the battle against crime. Local law enforcement units reflected the federal agency's new example regarding citizen involvement against crime. Many local police agencies assisted community groups, trained neighborhood patrollers, attended community meetings, shared victimization information, served on community anti-crime boards and provided equipment to mark the public's personal property. Police actions contributed to improved cooperation between criminal justice personnel and neighborhood groups. Further, these joint actions against crime increased the awareness and the involvement of the police in neighborhood crime prevention and established a responsible means for citizen input into the criminal justice system. A national evaluation survey of community anti-crime groups' activities reported that of those that responded 9.3 percent of the projects rated police relations as unsatisfactory; 12.1 percent gave the police moderately negative responses; 31.8 percent characterized their relations with police as neutral; 18.9 percent reported that they had moderately satisfactory relations.[16]

Congress further increased LEAA's funding level to support community groups, which was a new, congressional criminal justice ambition. On the technical assistance side, however, the GAO report indicated that LEAA's ratio of staff support to community anti-crime groups was too low to monitor and assist such programs effectively. Because community groups were essentially nonprofessional and the least sophisticated of LEAA's grantees, citizen anti-crime groups needed the most technical help from the agency in order to realize their goals.

The OCAC has a professional staff of eight persons who evaluate, fund, and assist nearly 150 neighborhood crime prevention groups. The ratio of LEAA personnel to community grantees is double that of other LEAA program offices that administer grants. On one hand, LEAA was following Congress' lead regarding citizen involvement and distribution of grants. But OCAC's insufficient staff capacity reduced the ability of community organizations to organize, manage, or evaluate their programs properly.

Table IX-2

Grant Monitor Ratios Within LEAA

LEAA Office	Grant/ Monitor Ratio
National Institute for Law Enforcement and Criminal Justice	4.0:1
National Criminal Justice Information and Statistics Service	7.3:1
Office of Juvenile Justice and Delinquency Prevention	7.6:1
Office of Criminal Justice Programs	7.6:1
Office of Community Anti-Crime Programs	16.0:1

Source: U.S. General Accounting Office, Letter to Congressman Conyers, April 24, 1979.

The initial focus of OCAC's activities was to implement the programs that Congress mandated in 1976. LEAA personnel concentrated on spreading its technical assistance to community groups, informing the public about OCAC, reviewing nearly 1,000 applications and approving funds for selected grantees. Workshops were held in 23 cities, mailings in the thousands were sent to community groups as potential applicants. Between January 1978 and September of the same year, the agency had awarded 142 grants. OCAC not only had insufficient staff to meet the technical/managerial needs of community groups, GAO also estimated that for 1980 "as much as $8 million" would be needed to fund existing community programs adequately.[17] This state of insufficient fiscal resources poses a profound threat to community anti-crime groups, especially in minority neighborhoods.

Analysis of the staffing patterns of local community anti-crime programs is also important to gain a fuller understanding of this program and its relationship to minorities. Nearly 50 percent of all program directors are minorities. Fifty-eight directors are white, 33 are black, 10 are Hispanic, and 2 are Asian-American. At the assistant director's level, 30 are white, 24 are black, 8 are Hispanic, and 3 are Asian-American. There are no Native American community anti-crime directors. There are, however, 98 blacks who hold managerial positions in these programs, compared to 75 whites who hold similar positions.[18] The implication of these staffing statistics is quite clear; minorities in managerial positions ensured a focus on minority needs and problems.

Table IX-3

Crime Comparison Between CAC and Non-CAC Cities

Crimes	CAC Cities	NON-CAC Cities
Larceny	3,468	3,515
Auto Theft	1,003	691
Property Crimes	6,526	6,031
Rape	52	17.5
Assault	381	42

Source: American Institute for Research, The Community Anti-Crime Program: A Preliminary Assessment of the Concept, W. Victor Rouse, et al., Washington, D.C. 1980, pp. 11-12.

Analysis of LEAA-funded community anti-crime programs reveals other positive factors relative to minorities and their involvement in the war against crime. According to the agency's data, 84.1 percent of the total neighborhood programs operate in urban areas. Suburban communities represent 7.1 percent of the projects, while the remaining 5.3 percent are based in rural areas. The average family income reported by 20.6 percent of these projects is $5,000 or less. The majority of these community anti-crime programs, 56.1 percent, reported family incomes between $10,000 and $15,000.[19] These data on income levels in communities fighting crime clearly demonstrate that federal support was critical given the degree of poverty affecting most minority communities. These communities had high levels of crime and, had not the government acted to aid their efforts, the rate of crime would have been greater than its present destabilizing level. The report on communities receiving OCAC support is evidently necessary when considering their rates of crime. Seventy-six cities with community anti-crime programs had burglary rates of 2,344 per 100,000 residents while non-CAC localities had burglary rates of 1,824 per 100,000.

With such higher rates of crime in OCAC funded cities, the need and potential of the citizen to respond positively to crime prevention is better realized through federal support.

The data on the racial compositions of community anti-crime programs show that 29 projects identified between 25 and 50 percent of their area populations as minorities, while 50 projects have populations of more than 50 percent minorities.[20] These statistics do not simply indicate that programs were funded in minority areas that had not traditionally participated in anti-crime efforts. Yet these statistics do demonstrate that minorities are the primary beneficiaries of federal community anti-crime support. Federal resources awarded to these groups allow them to operate organized community programs designed to halt crime, reduce the fear of crime and help maintain community stability and values.

Beyond the obvious benefit of providing financial support to communities, the LEAA program was also of benefit to minority criminal justice leaders. Administrative ambitions to involve minorities and to implement innovations regarding citizen participation were easier to achieve with federal resources provided specifically to address crime in minority communities. In contrast, communities that organized police-community relations units, which ceased after the urban disorders, began new efforts in this pursuit which could be undertaken by the community's anti-crime initiative supported with federal funds. In effect, OCAC programs not only helped communities but also encouraged new degrees of cooperation between police and neighborhood residents. Through this program as well, the federal dollars devoted to fight crime were being shared, although in small percentages, by the citizens in the community.

The vast majority of community anti-crime programs (85 percent of all programs) have community board structures for citizen input and participation. Significantly, 86.8 percent of these community boards give advice and consent to anti-crime programs designed and developed for their neighborhoods.[21] For example, one criminal justice researcher observed, "The key to citizen involvement in crime prevention in Woodlawn (The Woodlawn Organization, the TWO project in Chicago) is not only gaining [the citizens'] participation in the program, but gaining their consent to deal with the crime issue."[22] Wilson further asserts, "The relationship between the staff and the constituent members of TWO is political, in the sense that the staff needs the support of the community in many of its activities and the community needs the expertise and constant commitment of the staff to remain motivated, cohesive and effective." It should be noted that 25.5 percent of the programs reported that their anti-crime boards participate in the day-to-day operation of their projects, while 71.1 percent reported that their boards had the policymaking authority of their programs. Only 3 projects out of the total of 127 reviewed reported that they did not have citizens involved in the development or operation of their programs.[23]

2. The Local Response

The majority of community anti-crime programs include youth counseling, heightening public awareness, identifying property, preventing crime, assisting victims, escorting senior citizens, and improving police-community relations. Major benefits of such anti-crime efforts are that community people are able to organize to further instill the community's values among its residents and they can assume some crime prevention services, which reduces the police's substantial or direct involvement in matters of crime in their communities.

The major benefit of community anti-crime programs, according to Hayden Gregory, legal counsel of the House of Representatives' Subcommittee on Crime, is that federal funds encourage and enable community participation. The major results that Gregory identified include permitting citizens to determine their own focus of activities, while effectively involving citizens in the battle against crime.

To assess first-hand the community anti-crime programs, the Council dispatched its senior researcher to three cities in three diverse areas: (a) New York City, (b) St. Louis and (c) San Antonio.

New York Citizens Action for Safer Harlem (CASH) involves a mixture of people: community residents, members of the area Chamber of Commerce, and police. The program was organized by the New York Urban Coalition in conjunction with with the New York Amsterdam News. Among the services CASH provides are a hot line, victim assistance, escort for the elderly, neighborhood anti-crime block associations, a youth crime diversion program and a program to expose youth to the negative results of criminal activity. CASH began in 1977 with a grant from LEAA of $241,000 which was reduced in 1978 to $175,000. Its nine-member board of directors oversees a staff of nine professional employees. Neighborhood youth are taken to Rikers Island Prison to talk with inmates and see the adverse conditions of prison life.

A significant feature of the CASH program is the establishment of communications and cooperation between the police in that district and its residents. CASH intervenes as citizen advocates when problems emerge between police and residents. On occasion, CASH also participates in training programs designed to sensitize the police. CASH's greatest strength is that its program is a hub of varied activities that encourages community support and participation, especially among the CASH 40-member youth patrol protecting senior citizens. Evident in this program are the linkages between the elderly and the youth, the police and the community, CASH personnel and residents as well as the Rikers prisoners and the "misguided" youth on Harlem's streets. Through its small but dynamic program, especially the awareness generated through news articles in the Amsterdam News, CASH not only won respect and support but it was also able to have some effect on the growing crime problem in Harlem. While CASH is not capable of altering the realities troubling Harlem, its vitality at least gives hope and direction to its residents regarding the crime problem.

The St. Louis United Mid-Town anti-crime program operates in a racially mixed community in a transitional area. Everyone employed on United's staff is a community resident. The primary thrust of this program, asserts Al Goodrich, the director, "is directed towards attitudes." This program, like CASH, recognizes that the impact of crime contains the potential to organize communities to solve its problems. A significant problem confronting United is the varied factions within that community. United's community has a generation gap, wide economic differences, racial diversities and cleavages between city hall and the community. One United participant claims that "we are viewed as a threat by the police and the politicians downtown since they can't control our program."[24] Public relation efforts in this program, although not as coordinated or as concentrated as the joint CASH and the Amsterdam News activities, do give the United anticrime program high public visibility.

United's programmatic decisions are made by five task forces composed of 75 residents. These citizen committees determine the program's budget and oversee the anti-crime activities of the five subareas. Crime watchers from the community were trained. Other residents followed up on victims and referred citizens to other community resources. Area youths were given 15 hours of anti-crime workshops and literature on crime and anti-crime methods. Although United, an extension of that area's anti-poverty program, was challenged by internal divisions, its programs encouraged participation and a united citizens' assault against crime.

The Mexican American Neighborhood Civic Organization (MANCO) in San Antonio focuses primarily on the area youths who have increasing drug problems. Drugs are prevalent in San Antonio, especially among Hispanic youth, because San Antonio is merely a 150 miles from the Mexican-American border. The average income of community residents, according according to MANCO's director, Sam Alvarado, is $4,000, although in the neighborhood public housing project, the average income is almost $3,000. MANCO's problems are multiple, including undocumented workers and preying exploiters, poor police-community relations, limited Hispanic participation in the city's governmental leadership, anti-Hispanic attitudes and actions by whites and youth unemployment exceeding 50 percent. MANCO operates a halfway house for 24 youths ranging in ages from 8 to 17. Alvarado keenly observed that community problems are more difficult to resolve because of the city's recent actions in social services. He noted as well that, in a city with a population almost 60 percent Hispanic, bureaucratic methods usually do not contribute significantly to the development of the Hispanic community nor is Hispanic participation on the professional level in the city's bureaucracy significant. Blatant discrimination against Hispanics, both American citizens and undocumented persons, is evident as illuminated in a 1978 U.S. Civil Rights Commission report.

Alvarado sees MANCO's mission primarily as "self-protection" for its residents. Numerous physical attacks against Hispanics in San Antonio are common knowledge. Police raid homes seeking undocumented workers, and other whites act as a police auxiliary keeping Hispanics in their "place." In fact the Ku Klux Klan organized a paramilitary unit to monitor the border against Mexicans seeking entry into the United States. Recently, MANCO organized an anti-Klan rally with other community groups.

Although MANCO is not an elaborate program, its focus is service oriented and sensitive to the people it serves. Accordingly, its meetings are conducted in Spanish. In one neigborhood project sponsored by the agency, community youths painted murals on the walls depicting Chicano history. MANCO attempts to increase citizen awareness and to train residents in methods to reduce or control crime. It operates a bicycle co-op, a theater program and an anti-crime poster campaign. Although MANCO has a small staff, its community influence is substantial. It attempts to confront the internal problems afflicting the community while, at the same time, blunting the external impact of racism and other adverse social realities.

These three programs seek to organize their communities to fight against crime and to develop greater cooperation through joint citizen efforts. Two primary problems, however, threaten each program. Federal funds are running out and volunteerism, as CASH's director David Jackman emphasized, is not a serious option among people who are poor. None of the programs has a budget exceeding $200,000. While creativity is an asset, these programs rely heavily on federal support as their basic resource. These anti-crime initiatives can only penetrate the surface of the community crime problem given the limited federal financial support.

The primary benefits of these programs are that citizens again perform civic actions rather than depend solely on their city governments, especially the police. Commenting on the function of community anti-crime programs, one researcher observed, "The challenge is to organize the community to establish social control, not police control." Effectiveness of MANCO's juvenile programs is greater than that of typical juvenile detention centers. It is more effective to have CASH citizens run drug pushers out of their neighborhoods than to wait for the police to attack these criminals--confrontations which could escalate into great violence. Neighborhood residents can better develop community values and methods of anti-crime control than the law enforcement agency. Community leadership develops when citizens can determine their neighborhood's anti-crime programs, direct their services rather than only react to often insensitive or inappropriate law enforcement services.

C. Conclusion

Community anti-crime programs cannot alone produce a system of justice or even wipe out crime affecting them. It is however advantageous that Hispanics themselves can struggle against the KKK rather than merely depend on the police for protection. The disorders of 1980 in Chattanooga further demonstrate the advantage of community participation rather than exclusive dependence on police. Black ministers, community workers and civic leaders replaced riot-equipped police who patrolled the black ghetto during the riots. Police cooperated and stood on standby five blocks from the rioting area as a community cadre sought to restore calm. One leader, Fire and Police Commissioner Walter Smart, who is black, said to a crowd of residents announcing this unusual program, "We want to do what we can to show our faith in you. We hope and pray you will show your faith in us [the community patrol] by respecting these people [their neighbors]." Before the community patrol was organized, police were ambushed as they entered the black ghetto during the riots. The residents replaced police during the riots; the police did not have to return to the black community. Similiar results were realized by community leaders in Philadelphia in their recent disorders.

Such efforts and programs by citizens do not stop the causes of riots or crime but as the Chattanooga experiment demonstrated, the active involvement of citizens reflects a tremendous community criminal justice potential. Community anti-crime efforts can be used in minority areas where hope is absent, where cohesion for community is missing, where the spirit to struggle against crime is not vital, and where there is an absence of the strength to develop a sense of community. The solution to crime, however, is as the National Commission on the Causes and Prevention of Violence cogently indicated:

> Warring on poverty, inadequate housing and unemployment is warring on crime. A civil rights law is a law against crime. Money for schools is money against crime. Medical, psychiatric, and family-counseling services are services against crime. More broadly and most importantly, every effort to improve life in America's inner cities is an effort against crime.[25]

The Council maintains that only with the balance of necessary social reforms and the community's active participation in our criminal justice system can the nation ever hope to defeat crime or produce justice. Victims of crime as well as witnesses are more willing to trust their neighbors involved in anti-crime efforts rather than the police. In minority communities, a crisis of confidence exists because police services have proved neither effective against crime nor sensitive to community people. The history of relations between police and residents also affects this attitude held by many minorities. Finally, criminals find it more difficult to commit crime when community residents are on the alert, participating in anti-crime actions.

The ultimate advantage of community anti-crime efforts is the effect that a community develops its own resources, values and efforts for civility and community. Hoyt Fuller, editor of First World, observed:

> Those who have the capacity to succeed in American society, on society's terms, need every encouragement; but they also need to be persuaded that their own best interests demand that they return to the community some measure of strength. And those who are not able to compete on equal terms in the society need to know that, nevertheless, they are not ciphers, that they have energies and talents which can be used to build in the community a bulwark against the unending depression to which the society would condemn us.[26]

The Council has been extremely critical of the traditional criminal justice system's ability to control crime. It has taken the position that if this nation is to manage the crime problem successfully, there must be uniquely different approaches taken. To that end, the Council postulates the following principles of action: (1) that crime is rooted in the socioeconomic problems of the nation; (2) that crime is not racially motivated; rather, the high incidence of crime in minority communities must be viewed in context of the relative deprivation of minorities in America--that deprivation, however, is related to race;[27] (3) that before crime is controlled, its causative factors must be addressed, e.g., poverty, discrimination, racism, unemployment, inadequate education, etc.; (4) that the prevention of crime, not merely arrest, adjudication, and incarceration, must be the number one priority in crime control; (5) that because prevention has implications for all aspects of life, it must be conceived of and enacted in a multifaceted manner involving all aspects of community and government; (6) that the police and other components of the criminal justice system alone cannot control crime; (7) that because government alone cannot adequately control crime, there must be new proactive roles for the community to play based on concepts of shared power, self-care, and self-regulation; (8) that crime control planning must enable the flow of new ideas and information from the community; (9) that there is a need to develop crime control strategies at the federal, state, local, and neighborhood levels; and (10) that adequate federal funds must be made available for community groups to develop and operate anti-crime programs.

Through community involvement against crime a new self-sufficiency and capability result for minorities and enable positive versions of previous criminal justice services while developing viable, effective alternatives against crime. The citizen's involvement is an imperative in an effective fight against crime and with our institutions; citizens with government leaders can decrease the causes of crime and increase the realization of stable communities not plagued by constant crime or its fear.

NOTES

1. Transcript of the National Minority Advisory Council on Criminal Justice, Raleigh, North Carolina, December 1977, Vol. 1.

2. Transcript of the National Minority Advisory Council on Criminal Justice, Birmingham, Alabama, September 1979, Vol. 1.

3. U.S. Department of Commerce, Bureau of Census, Statistical Abstract of the United States, 1979, Washington, D.C., pp. 177, 291.

4. Justice Assistance News, U.S. Department of Justice, July 1980, Vol. 1, NO. 5, p. 1.

5. Black Crime: A Police View, J. Bryce Harrington, ed., Causes of Crime, Lee P. Brown, Law Enforcement Assistance Administration, Washington, D.C., 1977, p. 62.

6. Ibid, p. 63.

7. Ibid, p. 59.

8. National Advisory Commission on Criminal Justice Standards and Goals, Community Crime Prevention (Washington, D.C.: Government Printing Office, 1973), p. 205.

9. Lee P. Brown, "A Plan for the Professional Advancement of the Atlanta Bureau of Police Services," May 1980.

10. Law Enforcement Assistance Administration, "Legislative History of Citizens' Participation in Crime Prevention," p. 11-12.

11. Black Crime, op. cit., p. 25.

12. Interview with Cornelius Cooper, Director, Law Enforcement Assistance Administration, U.S. Department of Justice, February 1980.

13. Law Enforcement Assistance Administration, Executive Summary on the Community Anti-Crime Program, Michio Nakajima, Office of Audit and Investigation, August 1, 1979.

14. Letter to Honorable John Conyers, Jr., from U.S. General Accounting Office, Washington, D.C., April 24, 1979.

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15. Ibid.

16. American Institute for Research, The Community Anti-Crime Program: A Preliminary Assessment of The Concept, W. Victor Rouse et al., National Institute of Justice, U.S. Department of Justice, Washington, D.C., January 25, 1980, p. 19.

17. Conyers, op. cit.

18. The Community Anti-Crime Program, op. cit., p. 33.

19. Ibid, p. 16.

20. Ibid, p. 14.

21. Ibid, pp. 11-13.

22. Marlys McPherson and Glenn Silloway, Program Model: Planning Community Crime Prevention Programs, Office of Development, Testing and Dissemination, National Institute of Justice, 1979, p. 3-51.

23. The Community Anti-Crime Program, op. cit., pp. 30-37.

24. Program Model, op. cit.

25. National Commission on the Causes and Prevention of Violence, Washington, D.C. 1969.

26. Hoyt W. Fuller, "A Question of Values," editorial, First World Magazine, September, 1980, p. 63.

27. Black Crime, op. cit. p. 63.

CHAPTER X

RECOMMENDATIONS

> I must make an attempt to look at the system as it is. We must be relealistic about it, however. Yes, I do believe there's a possibility of change, but the change has to be in the root of the development of that criminal justice institution. It is not simply talking police brutality, for instance. We're looking at the relationship between the entire system with the people. So, we're talking about that from the patrolman to the judge's bench; there's a necessity for revamping the system from the nuts and bolts, from the basement, so to speak, to the very top floor.[1]

The National Minority Advisory Council on Criminal Justice having fulfilled its duties as set forth in its charter, makes the following recommendations to the Law Enforcement Assistance Administration and the U.S. Department of Justice regarding means by which the department and its various offices may, in the altering of their procedures, systems and behaviors, ensure that rights regarding "equal protection of the law" are protected, and that minorities receive "equal" treatment within the criminal justice system.

This report confronts the difficult problem of crime and inequality of justice that disproportionally impacts the nation's minority communities. Inherent in such a broad analysis is the basic responsibility and ambition of the Council to assist in creating equality within the criminal justice system, in particular, and in the larger society. In this regard, the Council's most important objective has been to define, and to foster acceptance and implementation of basic changes that are likely to influence reduced crime and increased justice for all.

As rising crime statistics in this report reveal, past reformers' models and plans have not succeeded in practice. These models have not succeeded because they contain a grave, basic flaw. The flaw, quite simply, is that it is impossible to solve or even sharply lessen the crime rate without changing the structure of the nation's basic institutions--especially the criminal justice system. Reformers do not recognize the flaw inherent in their analysis because they are attracted to the possibility of ending crime by punishing individuals or of applying new technologies without regard to the socioeconomic context within which crime exists.

Like most Americans, minorities desire both a crime-free society and equal protection under the law. In reality, the criminal justice system has accomplished little more than computerize data on crime, increased its use of new technology, processed those arrested, and convicted many for assignment to newly built prisons. The Council, however, advocates that crime and injustice can only be changed if the criminal justice system and the society at large address the causative factors of crime.

Public disorders experienced in Miami and other cities and the prison riot in New Mexico demonstrate that failures within the criminal justice system not only breed discontent but also massive social disorders. The problems of crime and injustice are the result of dysfunctional systems, not of individuals who are affected by socioeconomic forces beyond their control. Change is required if the nation is to solve these problems. Change is in the interest of all if the nation is to be a society governed fairly by law and if it is to exist in social tranquility.

The Council's recommendations, as follows, are built on the premise that the complex factors involved in these issues must be faced with all deliberate speed not only by criminal justice leaders and personnel but by all people who desire equality and justice.

A. Regarding Specific Minority Groups

- That the concept of tribal sovereignty be maintained in all matters of policy and decisonmaking for each tribal entity.
- That the U.S. Department of Justice provide tribes with adequate funding to develop and improve all phases of their criminal justice system.
- That a national center for coordinating information and materials about educational and vocational opportunities be established to serve American Indian prisoners.
- That there be established an active program of research on how the criminal justice system impacts American Indians.
- That tribal law enformecment authorities be entitled the authority, where they desire to exercise it, to investigate federal crimes that occur on Indian reservations and to present the evidence to the prosecuting body.
- That resources be provided to enable American Indian tribes and representative groups to develop and

operate correctional and alternative community facilities for American Indian offenders.

- That the right of American Indians to practice traditional religions, as required by the American Indian Freedom of Religion Act, be guaranteed to Indians who are incarcerated, including their access to designated spiritual leaders.

- That, because American Indians living on tribal lands must be free to govern themselves under their own code of law, federal statutes to the contrary--except for laws duly negotiated through treaty--should be repealed.

- That funding be made available to American Indian groups in metropolitan and other off-reservation areas so that culturally appropriate criminal justice programs can be developed.

- That the practice of diverting American Indians into culturally appropriate and culturally-based programs be adopted as early as and whenever possible by all components of the criminal justice system.

- That a national symposium on American Indians and the criminal justice system be convened to develop specific plans and recommendations for appropriate and effective criminal justice in their regard.

- That the National Institute of Justice and the Bureau of Justice Statistics issue solicitations for research and statistical studies that include an Asian-American component.

- That funding be made available to minority social science researchers or that individual scholars be commissioned to study the structural factors of crime.

- That studies be initiated which would lead to the development of policies and programs related to reduce exploitation of immigrants from Asia.

- That a system for national data collection be established that includes focused attention on the Hispanic community; but that first establishes an acceptable definition of "Hispanics", one that enables the accurate collection of data relative to Hispanic subgroups.

- That there be support for studies that look at the conflicts Hispanics experience with the differences between the legal and criminal justice systems of their homelands and those in the United States.

- That alternative modalities for dealing with Hispanic offenders be studied and experimented with, especially those that focus on roles played by offenders' families and the communities in which they live.
- That policy analyses be undertaken that look at the implications and probable impact for Hispanics of the decriminalization of certain classes of behavior; e.g. gambling.
- That studies be supported financially that look at the conflicting roles minority law enforcement officers incur as members both of their communities and of the law enforcement system.
- That efforts be made to influence increased participation of Hispanics in all levels of the court system, especially at the professional level; and, as jurors, those who are bi-lingual.
- That current immigration legislation be rescinded and new legislation passed that will allow "due process" to illegal aliens and undocumented workers.

B. Regarding the Structure of the Criminal Justice System

1. The Police

- That state and local police agencies be restructured and that they be mandated to serve and work primarily under control of local citizens to prevent crime.
- That local governing units enact legislation to create civilian police commissions to control the operation of the respective police agency/department and personnel within its jurisdiction.
- That, throughout their tenure, members of police departments/agencies be required to reside within the respective communities in which they serve.
- That police officers' use of deadly force not be allowed except where there is clear and present danger to the life or physical safety of a third party or the police officer. Strict enforcement is imperative.

- That police departments prohibit officers from carrying guns when not on duty.

- That training in cultural and ethnic sensitivity be made a part of the curriculum required for every police officer and new recruit.

- That the U.S. Department of Justice create a special task force to investigate allegations of assaults and acts of brutality by local police officers against minorities, and that criminal or civil actions brought against offending parties or jurisdictions, where appropriate, be aggressively pursued.

- That special prosecutors at the state and local level be hired to investigate and prosecute complaints of misconduct by police officers.

- That federal funding be withdrawn from police departments or municipalities with high incidences of reported violence against minorities.

- That more bilingual/bicultural individuals be hired and placed in all levels of police service, in sufficient balance as to reflect the needs of the local populations.

- That minority participation within all police departments, including positions of leadership, and based on percentages of minorities within the total population served in the community, be made to occur.

- That police departments design and enforce severe penalties against officers who unwarrantly discharge their firearms.

- That police departments adopt mandatory record-keeping systems to document each firearm discharge by their officers.

- That police departments establish mechanisms to ensure proper investigation in all instances where deadly force is used.

2. Education and Research

- That a national system for data collection be established that maintains accurate and current information on the status of ethnic and racial minorities as they interact with the criminal justice system.

- That a research program be instituted to look at ways in which ethnic and racial minority personnel within the criminal justice system are employed.

- That a research program involving minority scholars be established that explores alternatives for achieving the goal of equality and justice for all.

- That a research program involving minority scholars be established also to focus on the causes of criminal behavior among minorities, the ways in which society might be protected from such behavior, and the manner in which such behavior might be reduced.

- That the ways be examined in which other social services, such as education, community development, health maintenance, etc. can be redirected and redesigned to prevent crime or to assist in its reduction.

- That funding be provided to/for minority institutions and social science researchers so that they have the means to examine problems of crime as they relate to minority communities and to immigrant groups.

- That cost-effective and efficient training and education programs for local law enforcement personnel be established.

3. The Courts

- That federal, state, and local governments take positive action to increase the number of minorities on grand jury panels and petit juries through use of telephone directories, driver license listings, etc. as alternate sources of jury candidates.

- That federal, state, and local court systems access competent interpreters to guarantee that no minority defendant is denied a fair trial because of language limitations.

- That judges, who by their previous actions, have been detected to be racially biased, should through proper legal procedures be removed from their posts.

- That bicultural training courses for judges, probation officers, clerks, and other court personnel be provided by the Federal Judicial Center and the National Center for State Courts.

- That judges allow counsel sufficient time to prepare thoroughly for the cases they are assigned, and that perfunctory performances by appointed lawyers of defendents not be tolerated.

- That vigorous efforts be undertaken immediately by the federal, state and local courts to increase minority representation in all levels of the judical system.

- That state and local courts develop culturally appropriate and alternative mechanisms, e.g. community resolution centers, to resolve non-criminal disputes.

- That federal, state and local courts should institute procedures and hire personnel to develop effective affirmative action practices within the judiciary.

- That the U.S. Departent of Justice develop a national strategy model, with supportive or shared resources, to encourage states to adopt legislation that enables practical and effecient ways of handling the victimless, "revolving door" crimes such as gambling and prostitution, or those involving drug addiction, alcoholism and vagrancy.

- That the U.S. Department of Justice initiate actions to encourage each state to adopt legislation that mandates the use of Release on Recognizance (ROR) guidelines and other non-cash bail alternatives.

4. Corrections

- That a moratorium on construction of new federal, state, and local prisons be declared to ensure that all possible alternatives to adult and juvenile incarceration are examined, utilized and exhausted.

- Where prisons are constructed, they should not house more than 500 inmates and they should be located in close proximity to inmates' communities in order to enable families easy access for visitation.

- That minority/cultural awareness and bilingual training programs be required for staff employed in all levels of the correction system.

- That correctional personnel be representative of the offender population served.

- That offenders be assured access to competent and adequate medical and mental health services.

- That the primary focus of correctional programs be on rehabilitation and training, not on punishment.

- That a Prinsoner's Bill of Rights, having the force of law, be developed to guarantee humane treatment of all prisoners by corrections personnel.

- That arbitration and mediation techniques be explored for their use in the development of corrections programs.

- That adequate job skills development and psychological services be guaranteed to inmates who desire them.

- That post-release counseling, mental health treatment and job training be guaranteed to ex-offenders.

- That each state make counseling services available to the families of prisoners, especially those with a relative on "death row."

- That community facilities and programs be developed and utilized as an alternative to traditional incarceration.

- That the correction system develop and utilize uniform and standard policies and procedures.

5. Community Anti-Crime

- That localities earmark a portion of their annual criminal justice budget for community groups to help them organize and operate effective community criminal justice activities; e.g. community-based corrections, community dispute centers, citizen anticrime units.

- That federal support for community anti-crime activities be made available and in sufficient amounts to confront crime in local communities. Such funding should be made available for no less than three years.

- That federal agencies involved in local communities in the fight against crime coordinate their similar programs and resources as intra-departmental efforts rather than operating in isolation.

- That local community representation on police department community relations program boards and among personnel be guaranteed.
- That every police department organize community anti-crime efforts as a part of regular departmental programs and services.
- That local citizens be recruited as adjunct personnel in the law enforcement system to relieve police on desk assignments.
- That community persons be utilized in para-police services involving non-violent juveniles and other minor offenders.
- That, periodically, awareness and sensitivity training sessions involving community persons be provided to police and judicial personnel.
- That state and local law enforcement agencies create special community relations departments to focus on ways for developing joint police and community anti-crime efforts; participation in training and other in-service activities for police personnel; and community assistance in the recruitment of minorities for positions in law enforcement.

NOTES

1. Transcripts of the National Minority Advisory Council on Criminal Justice, Birmingham, Alabama, September 1979, Vol. 1.

APPENDICES

Appendix A:	Charter of the National Minority Advisory Council on Criminal Justice Original 1976 Council Charter
Appendix B:	National Minority Advisory Council Metheodology of Needs Assessment
Appendix C:	Biographies of NMACCJ Membership
Appendix D:	Names of Leadership Persons Interviewed by the National Minority Advisory Council on Criminal Justice
Appendix E:	Hearing Witnesses

APPENDIX A
CHARTER OF THE
NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE
ORIGINAL 1976 COUNCIL CHARTER

In order to assist the Federal, state and local governments in their efforts to improve law enforcement and the criminal justice system as it impacts on the minority communities by means of developing programs and policies which will provide those governmental entities with guidance and direction in those efforts, the Law Enforcement Assistance Administration hereby determines that it is in the public's interest and appropriate and consistent with the purposes of the Crime Control Act of 1973, P.L. 93-83 to establish the National Council which is hereby granted the following charter.

I. Designation

The committee shall be known as the National Minority Advisory Council on Criminal Justice (NMACCJ).

II. Authority and Scope

The Council will operate pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92-463, LEAA Instruction I 2100.1, OMB Circular No. A-63, and any additional orders and directives issued in implementation of the Act. The Council is established under the authority of section 517 of the Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90-351, as amended by Public Law 91-644. The scope of its function is limited to the duties specified in this charter.

III. Duration and Termination

The period of time necessary for the newly appointed Council to carry out its functions is two (2) years. The termination date will be June 18, 1978.

IV. Responsible and Support Agency

The Council will report to and receive support from the Law Enforcement Assistance Administration, U.S. Department of Justice, 633 Indiana Avenue, N.W., Washington, D.C. 20531. The designated Federal officer for the Council will be the Special Assistant to the Administrator for Minorities and Women.

V. Duties

The responsibilities of the Council will be advisory in nature. Its duties are to advise LEAA on the development of effective programs and policies relating to minority concerns and improving cooperation between public law enforcement agencies and private security services and to make recommendations for Federal, state and local governments in the implementation of minority concerns.

VI. Operating Costs

The estimated annual operating cost is $212,080 and one (1) man year.

VII. Membership

Membership of the council and its committees will be drawn from LEAA, other concerned Federal agencies, public law enforcement agencies, private businesses, social agencies, institutions and representatives from the minority groups designated by 28 CFR 42.301 and subpart E.

VIII. Meetings

The Council and its committees will hold meetings quarterly or as required to carry out its purpose and fulfill its duties.

I hereby grant this charter this 18th day of June, 1976.

Paul K. Wormeli
Deputy Administrator
for Administration

Appendix B
NATIONAL MINORITY ADVISORY COUNCIL METHODOLOGY OF NEEDS ASSESSMENT

PURPOSE

In order to assist the Federal, state and local governments in their efforts to reduce crime and improve the total criminal justice system as it impacts on the minority communities by means of developing programs and policies, the Law Enforcement Assistance Administration hereby deems it in the public interest to sanction a National Minority Advisory Council (NMAC) to accomplish this task.

The need for this National Minority Advisory Council on Criminal Justice (NMAC) is dramatically demonstrated by the pattern of minority involvement in the entire criminal justice system. With little direction at any level to provide insight and direction, this committee would assist LEAA in providing leadership from a cross section of approximately 50 minority groups to the criminal justice system as it impacts on its internal and external programs. 28 CFR, 42.301, Subpart E states:

> "The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968....has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States." (Emphasis added)

The 1970 Presidential Commission on Law Enforcement and Administration of Justice also stressed the need for criminal justice agencies to increase their minority representation in order to improve the image, attitudes, and delivery of services in minority communities. Recent Census Bureau figures indicate that the Black population was 24 million as of 1974, or 11.4%; the Hispanic population as of 1975 was 11.2 million, or 5.3%; the Native American population was 637,594, or .5%; and the Asian population was 588,324, or .5%. This brings the total minority population to 17.7%, yet minorities represent only 3.5% of the law enforcement employees clustered mostly at the entry level of the system. Similarly, the 1969 Joint Commission on Correctional Manpower and Training reported that only 8% of the total number of correctional employees were minority.

METHODOLOGY

This proposed methodology is to develop a mechanism that at will allow for the collection of information and data on a national scale of the effectiveness or ineffectiveness of the Criminal Justice System, particularly as it relates to services. Specifically, the National Minority Advisory Council on Criminal Justice is charged with advising LEAA on the needs of minorities at the local, state, and national level in regard to the following areas, minority criminal participation (adult and juvenile), victimization, crime deterrence, community typology, and criminal justice employment density.

OBJECTIVES

In order to accomplish the purpose, a needs analysis or assessment, nationally, must be completed to generate a concise and accurate picture so that reciprocal, factual, and timely advisement can emanate between the Council and LEAA. The most feasible methodology in this development is through onsite visitation at the local and state level. This is justified since 85% of all LEAA funds are dispensed at these levels; therefore, it makes good sense to determine how these funds have effected and affected minorities at all levels. It is well recognized that criminal justice is a continuum; hence, necessitating that the Council be able to deferentiate each sector as it impacts on minorities. The Council can maximize these efforts by subdividing itself into special categories that correlate to each of the criminal justice sectors (see organizational chart, subcommittees). It is proposed that the Council hold a series of national hearings following the regional design utilized by LEAA. These hearings will constitute the prime method for gathering accurate information identified in the aforementioned purpose section. Since random sampling is an acceptable research methodology, it is proposed that the hearings consist of a sampling of criminal justice sectors in each of the regions.

COLLECTION OF INFORMATION

The NMAC will not be a Grievance Hearing body; the proposed hearings are designed for the sole purpose of gathering information that will afford an understanding of the impact of criminal justice on minorities. To facilitate the collection of data, each representative member will play an important and crucial role in the development of regional hearings by notifying their respective constituents in the designated area. First, each member will be asked to submit a list of all the agencies and resource persons that should be notified about the information gathering process. From this list, the National Council can identify those agencies or resource persons who can provide input into its five areas of concern which are: courts, corrections, police, criminal justice education, and community-based programs. The screening process is to preclude repetition and duplication of effort. The NMAC will work as subcommittees of the Council and will be responsible for gathering and compiling data in its respective area based on expertise and minority designation.

After the completion of hearings in the regions, all subcommittee reports will then be combined into one final report and prioritized which will be delivered to the Administrator of LEAA. The final report will reflect the status of the criminal justice system and its impact on minorities in the United States. Although the delivery of a final report will be the ultimate goal for the first year, the subsequent years of the NMAC will be dedicated to advising of LEAA relative to the implementation of the final report and numerous areas of mutual concern.

Appendix C
BIOGRAPHIES OF NMACCJ MEMBERSHIP

Lee P. Brown, Chairman

Dr. Brown, a recognized criminal justice leader in the policy, academic, and management areas, is currently Commissioner for Public Safety in Atlanta, Georgia. He has been involved in the field of criminology for 20 years. He received his doctorate degree in criminology from the University of California. Dr. Brown has served on the faculty of Portland State University and was a professor of Public Administration and Director of Criminal Justice Programs at Howard University. He began his career with the San Jose Police Department. Dr. Brown has been a consultant to various federal, state, and local governments on issues of crime and criminal justice. He has also served as an advisor to the Law Enforcement Assistance Administration and the Community Relations Service of the U.S. Department of Justice. Active in community and criminal justice organizations, Dr. Brown is a member of the National Advisory Commission on Criminal Justice Standards and Goals. A recipient of numerous public awards and honors, he also served as a Presidential appointee to the United Nations Program on the Prevention and Treatment of Offenders.

Rose Matsui Ochi, Vice-Chairperson

Ms. Ochi's varied professional involvements are evidence of her interest in social justice from her years as a secondary teacher in the barrios, to her service as a Reggie Fellow and attorney at the Western Center on Law and Poverty, where she conducted constitutional law reform litigation and legislative advocacy challenging the inequality of services thus ensuring the rights of minorities and the underprivileged. In her capacity as Executive Director of the City of Los Angeles Criminal Justice Planning Office, she has developed a comprehensive criminal justice plan and innovative programs directed to improving the administration of justice. In her role as Executive Assistant to the Mayor, she has argued for progressive policy and legislative changes on justice related issues.

Andrew J. Chishom, Secretary

A noted criminologist, Dr. Chishom's work as an educator, human rights advocate, community organizer, and criminal justice practitioner has earned him numerous awards, honors, and other professional distinctions. Possessing a doctorate in correctional rehabilitation (University of Georgia), Dr. Chishom has shaped an impressive career that has included the following work: U.S. Marshal; Special Assistant to the President and Professor, Criminal Justice Department (University of South Carolina); Director of Minority Affairs for the Carter-Mondale Presidential Campaign; LEAA (Department of Justice) Policy Analysis team member; Coordinator for the Correctional Master Plan Study, Office of the Governor, State of South Carolina; Field Director for the National Urban League, Labor Education Advancement Program; Chairman of the Board (Community Organization for Drug Control, County and City of Greenville); Program Planner for the Metropolitan Police Department, Washington, D.C.; and a host of consultant assignments for federal, state and municipal agencies, educational institutions, and private organizations with interests and activities focused on manpower and training, curriculum development, juvenile offense, adult rehabilitation, drug abuse and mental health, and other issues in the criminal justice field.

Dr. Chishom has received a number of honors and awards over the years, recent distinctions being his inclusion in the 1980 International Who's Who in Community Service and Community Leaders in America publications.

Dulcie Alfton

In addition to her duties as a member of the National Advisory Council on Criminal Justice, Ms. Alfton serves as a Senior Planner for the Hennepin County Office of Planning and Development in Minneapolis, Minnesota. Her professional experience and affiliations include involvement with the Governor's Crime Commission of the State of Minnesota as an American Indian Criminal Justice Specialist and with the Minnesota State Board of Human Rights.

Salvador D. Baca

Mr. Baca, for more than 10 years, has been involved in corrections, in both the parole process and service to juvenile offenders. He has worked for the California Youth Authority and the Department of Corrections in a variety of positions including correctional caseworker, a parole agent, and a supervisor of parole agents. In those positions, Mr. Baca worked with and counselled young men and women of varied ethnic backgrounds and developed social, law enforcement, recreational, religious, and educational community resources concerned with the rehabilitation of offenders. Mr. Baca is currently employed at the California Department of Corrections in the Parole and Community Services Division and is responsible for training administrative and line staff. He has also served that department in supervising a caseload of narcotics addicts and felons and provided counseling for their families. In addition to his affiliation with NMACCJ, Mr. Baca is a past national president of the Mexican-American

Correctional Association and is co-founder of the National Hispanic Correctional Association.

Tyree S. Broomfield

Mr. Broomfield's involvement in law enforcement administration and criminal justice practices emerged from early career experiences as an administrator of human relations and social services delivery systems. In the sixties, Broomfield served as Executive Director of Action, Inc. (a social action agency funded by the Office of Economic Opportunity, directing work aimed at lowering police/community hostilities). He later served as an Intergroup Relations Specialist for the City of Dayton in charge of the city's division of the Human Relations Council. Within a few years, he became more intimately involved in police administration in Dayton, serving as an Admnistrative Assistant to the Director of Police; Director of Conflict Management Programs; Superintendent; and, finally, his present position as Deputy Director of the Dayton Police Department. In that time, he also participated in numerous law enforcement, criminal justice and human rights and services organizations throughout the country. He has lectured at universities in Ohio, Michigan, Missouri, Kentucky, and California and has consulted with both public and private organizations on subjects significant to the planning and implementation of community relations, affirmative action management, crisis intervention, police training, public safety, and community health programs.

Federico Costales

Mr. Costales currently serves as District Director of the Miami District Office of the U.S. Equal Employment Opportunity Commission. He began his career in criminal justice nearly 20 years ago as a patrolman and later as a detective on the New York City Police Department. In 1974, Mr. Costales was appointed Inspector General of the New York Human Resources Administration, where he was involved in the delivery of varied social service programs. He is a graduate of John Jay College of Criminal Justice and has served as chairman of the Hispanic Criminal Justice Task Force in New York as well. He has previously been a consultant to the Community Relations Service of the Department of Justice and the U.S. Community Services Administration. He is the founder and chairman of the board of directors of the National Conference of Hispanic Law Enforcement Officers.

Guarione M. Diaz

Mr. Diaz serves currently as Executive Director of the Cuban National Planning Council in Miami, Florida. A sociol-

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ogist by training, he was formerly a family counselor for the Little Flower House of Providence in Brooklyn, New York, where he provided child placement services. He has worked extensively in the area of manpower and career development for various state and municipal agencies in New York City, including service as a special assistant to the Commissioner for Community Development Agency in that city. Among his publications is a study on "The Evaluation and Identification of Needs in the Cuban Community." Having earned a master's degree from Columbia University in community organization and planning, he also teaches a course at Barry College in Miami on Hispanics in the United States.

A. Reginald Eaves

A. Reginald Eaves, representative of the Fifth District and Vice Chairman of the Fulton County, Georgia, Commission, has served in state and local governments for the majority of his career. Mr. Eaves served as administrative assistant to the President of the Massachusetts State Senate. He later served as an administrator to the Boston Commission on Human Rights in the Office of the Mayor. For two years, Mr. Eaves was Commissioner of Penal Institutions for Boston and Suffolk Counties. He was also actively involved in community programs; he was executive director of the Roxbury Youth Training and Employment Center and later executive director of the South End Neighborhood Action Program. Mr. Eaves was Atlanta's first Commissioner for Public Safety where he initiated and/or rejuvenated programs in domestic crisis intervention, automation of a criminal justice information system, hostage negotiation, and crime prevention.

Lennox S. Hinds

Mr. Hinds is an associate professor of criminal justice at Rutgers University, a Charles H. Revson fellow of the Center for Legal Education of the City College of New York and a practicing attorney. He has represented many political and popular clients, as well as poor and minority people ensnared in the criminal justice system. He served as national director of the National Conference of Black Lawyers from 1973 to 1978 and presently serves as permanent representative to the United Nations for the International Association of Democratic Lawyers.

Frank Jasmine

Mr. Jasmine, a native of St. Louis, Missouri has been involved in criminal justice programs on various professional levels; including responsibilities as an inmate counselor, a probation and parole officer for adult inmates, a corrections grant manager, a pretrial intervention specialist, an alcohol and drug treatment counselor for federal prison inmates, and as a state governmental liaison to criminal justice agencies. During his 15 years in corrections, Mr. Jasmine has provided individual counseling for inmates of the Illinois Security Hospital for the Criminally Insane. He also assisted in vocational and rehabilitation counseling services at the Illinois State Penitentiary. He has worked with juvenile offenders as co-therapist and as an individual counselor. Working with the Missouri Circuit Court Probation and Parole Department, Mr. Jasmine supervised about 100 probationers and assisted in mediating their domestic difficulties and in locating employment opportunities for them. Mr. Jasmine was a grants specialist/manager for federally funded corrections programs at LEAA. He is currently Assistant Secretary to the Governor of New York and monitors the operation and management of the state criminal justice agencies.

Irving Joyner

Mr. Joyner is an attorney in the private practice of law in North Carolina, and has been extensively involved in criminal justice for the past twelve years. Although previously involved in elementary education and business administration, he obtained his law degree from Rutgers University. He was previously Director of Criminal Justice Programs and Community Organizations for the United Church of Christ's Commission for Racial Justice. He is a former co-chairperson of the Brooklyn Congress for Racial Equality and served as vice chairman of the North Carolina Association of Black Lawyers. Active in community and professional organizations, Mr. Joyner serves on various local, state and national groups.

Merritt D. Long

With academic background in Education Guidance and Counseling, Mr. Long has had twelve years of professional experience in the adult corrections field including institutions, parole and probation, community-based work-training release programs and volunteer programs. Additionally, he has extensive experience in developing and managing manpower programs for adult and juvenile offenders in the State of Washington. He presently directs the Corrections Clearinghouse for the Employment Security Department for the state where principal program thrusts include the department's Employment and Training Coordination Project, Career Awareness Project, Cooperative Career Exploration for Youth Project, and the Ex-Offender Work Orientation Project, all of which involve improved employment, training and supportive service opportunities for ex-offender or juvenile parole populations in the state. Prior to this work, for many years, Long served as a probation and parole officer for the State of Washington

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where, among other innovative accomplishments, he established a nonprofit corporation for the purpose of selling prison art work to the general public. Long, who began his career in Seattle as a Community Worker for the Washington State Board Against Discrimination (now the Washington State Human Rights Commission), continues his affiliation with a number of human rights organizations, and, is similarly associated with vocational education and correctional groups.

Ethel Payne

Ms. Payne serves as a member of the Illinois Law Enforcement Commission and on the Chicago Crime Commission as well as a variety of other civic and professional organizations. She was previously a writer in residence at the Institute for Education Leadership at George Washington University. She was formerly associate editor and Washington correspondent for Sengstacke (a newspaper), an assistant to the vice chairman of the Democratic National Committee and a writer for various organizations, including CBS. She has travelled extensively throughout the world on journalistic assignments, including coverage of the war in Vietnam and the civil war in Nigeria. She was a special presidential envoy on several African tours for the U.S. Department of State. Ms. Payne is a noted lecturer on the college circuit, active in women's affairs and has received numerous awards for her journalistic achievement and civic involvements.

Patricia M. Vasquez

An attorney, Ms. Vasquez was appointed by President Carter to serve as a member of the National Advisory Council on Vocational Education. She has served as staff attorney for the Mexican-American Legal Defense and Educational Fund and directed the Chicana Rights Project, the women's rights component of that national organization that combats discrimination against Hispanic women. Ms. Vasquez served on the Committee on Enforcement and the Law for the International Women's Year Commission. She is currently a member of the National Council of LaRaza Hispanic Council on Criminal Justice.

Appendix D
NAMES OF LEADERSHIP PERSONS INTERVIEWED BY THE NATIONAL MINORITY ADVISORY COUNCIL ON CRIMINAL JUSTICE

Gary Mendez, Director
Justice Division
National Urban League
New York, New York
March 26, 1978

Louis Bruce
Pete Tailor
Carl Funkie
Allen Parker
Members of the Senate Select Committee on Indian Affairs
May 23, 1978

Maynard Jackson
Mayor of Atlanta
Atlanta, Georgia
June 10, 1978

Kenneth Webster
Little Earth Community
National Congress of American Indians
Minneapolis, Minnesota
June 21, 1978

John Poupart, Director
Facility of Men
Anishinabe Longhouse
Minnesota Department of Corrections
Minneapolis, Minnesota
June 21, 1978

Henry Mercado, President
Mexican-American Correctional Association
August 3, 1978

Jerry Enomoto, Director
California Department of Corrections
Sacramento, California
August 4, 1978

Ezunial Burts
Executive Assistant to Mayor
Los Angeles, California
August 9, 1978

Lionel Wilson
Mayor of Oakland
Oakland, California
August 11, 1978

Eugene Suarez, Chief
Division of Law Enforcement
Bureau of Indian Affairs
U.S. Department of Labor
September 5, 1978

Judge Matthew Perry
U.S. Court of Military Appeals
Washington, D.C.
September 13, 1978

Cong. Robert Garcia
___ District
New York, New York
September 15, 1978

Judge Bruce Wright
Criminal Court
New York, New York
November 9, 1978

Appendix E
HEARING WITNESSES

Before the National Minority Advisory Council on Criminal Justice

Anaheim, California, October 1979

Tony Casas
California Department of Corrections

Tony Acre
Mexican American Correctional Association
San Bernardino, California

Jim Santu
Mexican American Correctional Association
Bay Area

Tom Metzger
Ku Klux Klan

Chon Martinez
League United Latin
American Citizens

Jerry Jaramillo
American G. I. Forum

Monica Herrera Smith
Mexican American Correctional Association

Helen Sierra
Parents Who Care
Wilmington, California

Keith Taylor
Native American Criminal Justice Problems
Los Angeles, California

Idalia Chestnut
American Civil Liberties Union
South Bay Chapter
Harbor Human Relations Council

Carlos Cruz
Latino Peace Officers Association

Cristina Cruz
Mexican American Correctional Association
Los Angeles, California

Ralph Quinte
United Filipino-American Association
Caism, California

Eddie Letson
Klu Klux Klan

Domino Rodriguez
Fire Commissioner
Los Angeles, California

Gilberto Jasso
American G. I. Forum

Maraesba Tackett
Southern Christian Leadership Conference

Hector Carreon
American G. I. Forum
Los Angeles, California

Benjamin Aranda, III
Mexican American Correctional Association
Los Angeles, California

Bob Smith
Sons of Watts
Los Angeles, California

Marianna Tinoco Rodriguez
American G. I. Forum

Roberto Garcia
Los Angeles, California

Loretta Rondle
Youth Information Center
Los Angeles, California

Burt Pines
Attorney
Los Angeles, California

Miguel Duran
Los Angeles, California

Wilmer Leon
Sacramento, California

Nelson Offley
Black Probation Officers
Association
Los Angeles, California

Herbert Troupe
Los Angeles, California

Jess Wilcox
Bren, California

Willie E. White
Pomona, California

Rainey Buichett
Citizen

Birmingham, Alabama, September 1979

Reverend Jack Zylman
Alliance Against Political
Racist Repression

Scott Douglas
U.S. Communist Party,
U.S.A.

Hiram Wilbert Crawford, III
Citizen

W. C. Patton
National Association for
the Advancement of
Colored People (NAACP)

Reverend
Abraham Lincoln Woods
Southern Christian Leadership Conference (SCLC)

Reverend
Richard Cottonreader
Southern Christian Leadership Conference (SCLC)

Deborah Jackson
National Conference of
Black Lawyers

Senator V. W. Clemmon
Alabama State Senator

Don Black
Ku Klux Klan

Jim Bains
Citizen

Dr. John Cade
National Association for
the Advancement of
Colored People (NAACP)

Louis Willie
Executive Vice President
Booker T. Washington
Insurance Company

Dwight Burgess
National Urban League

Larry Langford
Birmingham City Council

The Honorable
Richard Arrington
Mayor
Birmingham, Alabama

Horace Huntley
University of Alabama

Reverend Richard Duncan
Director
Greater Birmingham
Minorities

Dr. Ruth Jackson
National Housewives
Association

Oklahoma City, Oklahoma, August 21, 1978

Helen Gigger
Legal Council
Oklahoma State Crime
Commission

Larry Wiley
Equal Employment Opportunity
Commission
Oklahoma State Crime Commission

Marrim Stepson
Oklahoma Indian Affairs
Commission

Ken Cadue
Kickapoo Tribe

Keren Virgilio
Oklahoma Human Rights
Commission

John Knife Chief
Pawnee Tribal Business
Council

Evan Haney
Seminole Nation
International Indian
Treaty Council

Thomas Ahaissee
Semiole Nation
Treaty People

Vincent Riley
Creek Nation

Pat Hoffman
Native American Center

Sioux Falls, South Dakota, May 1978

Pliga Bordeaux
Human Rights Commission
Sioux Falls, South Dakota

Art Ziniga
Governor's Office for
Indian Services
Pierre, South Dakota

Dave Williams
NAILS
Sioux Falls, South Dakota

Mary Sue Donahue
Human Rights Commission
Pierre, South Dakota

Dwayne Addison
Professor
Augustana College
Sioux Falls, South Dakota

Martin Broken Leg
Rosebud Sioux Tribe
Professor of Indian
Studies
Augustana College
Sioux Falls, South Dakota

J. D. Thompson
Professor
Augustana College
Sioux Falls, South Dakota

Bill Kenyon, Attorney
Sioux Falls, South Dakota

Herman S. Salem
Warden
South Dakota State
Penitentiary

Ted Means
Tribal Leader
Porcupine, South Dakota

Severt Young Bear
Pine Ridge Reservation
South Dakota

Louis Tiger
Indian Prison Coordinator
Yankton Sioux Tribe

Mary Goins
Sioux Falls, South Dakota

William Janklon
State Attorney General
Pierre, South Dakota

Thomas LeBlanc
Sisseton Indian Reservation
Sisseton, South Dakota

Raleigh, North Carolina, December 1977

Leon White
Inmates Grievance Commission for the State of North Carolina

Dr. Jeannette Allen
Director of Criminal Justice
Fayetteville State University
Fayetteville, North Carolina

Shawn Smith
Student
Shaw University
Raleigh, North Carolina

Robert Williams
Student
Fayetteville State University
Fayetteville, North Carolina

Samuel Bost
Executive Inmate
North Carolina Department of Corrections

Marvin Byrum
Ex-Inmate
Colorado Correctional Department

Harriett Quinn
Task Force on Criminal Justice

Di Lorenzo Thompson
Chairman
Division of Administrative & Urban Sciences
Department of Administration and Criminal Justice

William Windley
Director
Youth Services for the State of North Carolina

Michael Lindsey
Psychologist
North Carolina Department of Corrections

Kenneth Kimball
Student
Fayetteville State University
Fayetteville, North Carolina

Margaret Muhammed
Community Volunteer
North Carolina Correctional Center for Women
Consulting Coordinator
World Community of Islam

Mac Hulslander
Former President
Raleigh Community Relations Commission

Doris Foushee
Sub-Director
Durham Employment and Training Office

Barbara Arnwine
Staff Attorney
North Carolina Legal Systems Program

Joyce McKissick
Inmate/Resident
Soul City, North Carolina

Los Angeles, California, November 1977

Bob Ramirez
Youth Opportunities Unlimited
Los Angeles, California

Juan R. Jiminez
Director
Operational Youth Educational Services
Rosewood, California

Dr. Joan Moore
Los Angeles, California

Bob Sanchez
Los Angeles, California

Lt. James Saboda
Los Angeles, California

Darrow Smith
San Francisco, California

Arnie Wagner
Attorney

Arnie Wagner
Attorney
Los Angeles, California

Kim Wilkins
Student
Workshop on Gangs

Lonny Buntley
Workshop on Black Organizations

Lucia Valdez
Chino, California

Roberto Casto
Los Angeles, California

Brenda Bouche
Los Angeles, California

Anita Louis
Los Angeles, California

Rubin Chacon
Los Angeles, California

Fred Martel
Los Angeles, California

K. Lyle Kurisaki
Inglewood, California

James Jackson
Workshop on Educational Systems
Los Angeles, California

Eric Johnson
Elizabeth Fry Center
Los Angeles, California

Danny Blackwell
Executive Director
Los Angeles Brotherhood Cause

Chicago, Illinois, September 1977

Connie Sills
Executive Director
Illinois Commission on Human Relations

Charles Knox
President
National Conference of Black Lawyers

Joseph Agnello
The Safer Foundation

Judy McLaughlin
Appalachian Representative

Howard Saffold
Afro-American Patrolmen's League

Orthello Ellis
Abraham Lincoln Center
Chicago, Illinois

Rick Fernandez
The Safer Foundation

Victor Good
Associate Director
National Conference of Black Lawyers

Cornelius Marrington
Native Americans Representative

Ruth Wells
Director
Citizens Alert

Wallace Davis
Concerned Citizens

Don Poindexter
Director
Alcholic Rehabilitation Center
Peoria Citizens Committee for Economic Opportunity

Jera Richardson
National Bar Association

Doris Worthington
Field Representative
Coalition of Colored Women in the War on Crime

Atlanta, Georgia, June 1977

Charles Allen
Director
Public Center
Plainfield, New Jersey

Charles Parks
Long Beach, California

William Dyer
Citizen

Julius Debro
University of Maryland

Anthony Leban
Lafayette, Louisiana

Tom Farbick
Police Department
Detroit, Michigan

Charles Rinkevich
Regional Administrator
Region IV
Atlanta, Georgia

Julius Jordan
Louisiana

Ed Bailey
Department of the Navy

Calvin Duncan
Lancaster, Pennsylvania

Terris Green
National Bar Association

Harold Johnson
Detroit, Michigan

New York, New York, July 1977

Henry Valez
Grand Council of Hispanic Societies in Public Service, Inc.

Jim Nance
Police Officer
Newark, New Jersey

Roberto Clemente Lopez
Latin-American Community Center
Wilmington, Delaware

Vernon McKinzie
New York State Department of Correctional Services

Luis Pons
Executive Director
Community Corporation of
the Lower East Side

Tony Whittaker
Port Authority Guardian
Association

Chick Lim
Chinatown Youth Workers
Consortium

Eddie Chan
Program Director
Project Hing Dai
Chinatown Youth Workers
Consortium

Joan Rodriguez-Munoz
National Puerto Rican
Development and Training
Institute

Gera Richardson
National Bar Association

Mohammed Sal Udin
University of the Streets

Howard M. Holder
Holy Apostle Center
New York City

Harry Kresky
Committee to Defend Poor
and Working People
Against Repression

Napolean Mitchell
Vice President
Counsuleers

Eugene Daniels
New York City Department
of Corrections

Shirley Elu
HRO - 1 Advisory Council
Client Advisory Council
Children of Today - Adults
of Tomorrow

Billy Dyer
President
Bronx Neighborhood
Coalition

Yolanda Bako
Rape Victims and Battered
Women
Mayor's Task Force on Rape

Dennis Reeder
East Harlem Community
Corporation

San Antonio, Texas, March 1977

Alex Bristamente
Community Precinct One
Biexar County
San Antonio, Texas

Jill Root
Director
Rape Crisis Center
San Antonio, Texas

Vickie Burke
Coordinator of Volunteers
San Antonio Rape Crisis
Center

Reverend Christian Kebl
Chaplain
Bexar County Jail
San Antonio, Texas

Dorothy Deebose
Research Study on Mothers
in Prison
Fort Worth, Texas

Leonard Quinlin
County Director
Healy Murphy Learning
Center

Joe Hernandez
Director of Public Education
San Antonio Rape Crisis Center

Charles Neil
Adult Probation Officer
Bexar County, Texas

Ruth Sandoval
Attorney
San Antonio, Texas

Attorney
San Antonio, Texas

Minnie Williams
Project Director
Area Agency on Aging
Alamo Area Council of Governments

Richard Moreno

Officer
Bexar County
San Antonio, Texas

Roberto Limas
La Casa
Detroit, Michigan

Jim Eggeling
Executive Director
Toward Foundation
San Antonio, Texas

Alfred Aleman
Representative
Mexican-American Neighborhood Civic Organization

William Holcak
Director
Bexar Metropolitan Criminal Justice Council

Yolanda Santos
Bridge Emergency Shelter

Delores Brattiff
Executive Director
Ella Austin Community Center
San Antonio, Texas

Lonnie Duke
Attorney
San Antonio, Texas

Father Bronson
Director
Patrician Movement

Civil Services Commission
Corpus Christi, Texas

Rudy Hernandez
National Director
Chicano Drug Abuse Administration
Dallas, Texas

Ruben Garcia, Jr.

Southwest Training Institute
El Paso, Texas

Hector Sapino
Child Care Worker
Bridge Emergency Shelter

Minnie Lorea
Representative
Volunteer Group on Criminal Justice Reform

Marie Porter
Executive Director
Drug Abuse Central
San Antonio, Texas

Richard Avena
Regional Director
South West Regional Office
U.S. Commission on Civil Rights
San Antonio, Texas

Seattle, Washington, September 1976

Sterling Johnson
Special Narcotics
Prosecutor
New York City

Chick Vance
Secretary
Black Law Enforcement
Association
State of Washington

Ora Allen
Tacoma, Washington

Alviritta Little
Executive Director
Girls Club - Puget Sound
State of Washington

Tsuguo Ikeda
Native American
Representative
Seattle, Washington

Bill Yallup
Yakima Tribal Council
State of Washington

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